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Supreme Court of the United States

OCTOBER TERM, 1967

No. 78

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 1291, ITS OFFICERS AND MEMBERS, PETITIONERS,

vs.

PHILADELPHIA MARINE TRADE ASSOCIATION.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PERMANENT FOR CERTIORARI FILED APRIL 2, 1967

CERTIORARI GRANTED MAY 12, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

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vs.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
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[fol. A]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 15804

PHILADELPHIA MARINE TRADE ASSOCIATION,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
Its Officers and Members, Appellants.

APPEAL FROM ORDER OF UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA, HOLDING APPELLANTS
IN CONTEMPT FOR VIOLATION OF INJUNCTION

Appellants' Appendix—Filed April 5, 1966

[fols. 1-3]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
RELEVANT DOCKET ENTRIES

- 4 Sept. 15 Order of Court that the defendant comply
with the Arbitrator's Award issued on June
11, 1965, filed. 9-16-65 entered & notice mailed.
- 7 " 16 Notice of appeal by defendant, filed. Copy to
Kelly, Deasey & Scanlan, Esqs.
- Sept. 16 Record transmitted to U. S. Court of Ap-
peals.

[File endorsement omitted]

- Sept. 21 Supplemental record transmitted to U.S. Court of Appeals (re: exhibit).
- “ 22 Bond for costs on appeal in sum of \$250.00 with Fidelity and Deposit Company of Maryland as surety, filed.
- 1966
- Feb. 28¹ Hearing sur rule to show cause why defendant should not be held in contempt for violating Order of 9/15/65
(Continued to 3/1/66 at 2 P. M.)
- 14 “ 28 Order of Court directing rule to be issued against defendants to show cause why they should not be held in contempt of Court for violating Order of 9/15/65—returnable 3/1/66 at 2 P. M. in Courtroom No. 5, filed. (3/1/66 entered)
- Mar. 1 Hearing sur rule to show cause why defendants should not be held in contempt of Court for violating Order of 9/15/65 Witnesses sworn Eo Die: The Court adjudges the Union, officers and men, guilty of civil contempt only. SENTENCE: Fine of \$100,000.00 per day effective this date at 2 P. M. The first payment to be made within 24 hours to the Clerk and every day thereafter as long as the Order of this Court is violated. March 7, 1966 at 2 P.M. reserved for further hearing if desired
- 15 Mar. 1 Defendant's demand for jury trial, and Order of Court refusing same, filed.
- 16 “ 2 Transcript of hearing of 2/28/66, filed.
- 17 “ 2 Transcript of hearing of 3/1/66, filed.
- 18 “ 2 Notice of appeal of defendant, filed. (3-2-66 copies to Kelly, Deasey & Scanlan, Esq. and U.S. Court of appeals)
- 19 “ 2 Copy of Clerk's notice to U.S. Court of Appeals, filed.

[fol. 4]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647

PHILADELPHIA MARINE TRADE ASSOCIATION,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 1291

Philadelphia, Pa.

Transcript of Testimony—February 28, 1966

Before HON. RALPH C. BODY, J.²

PRESENT:

DEASEY, KELLY & SCANLAN by FRANCIS SCANLAN, Esq.,
for Philadelphia Marine Trade Association.

FREEDMAN, BOROWSKY & LORRY by MARTIN VIGDERMAN,
Esq., for International Longshoremen's Association, Local
1291.

[fol. 5]

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: This is in the matter of Philadelphia Marine Trade Association vs. International Longshoremen's Association, Local 1291, No. 15613.

Now, then, I understand Mr. Scanlan appears for Philadelphia Marine Trade Association?

Mr. Scanlan: Yes, Your Honor.

The Court: And Mr. Vigderman for the International Longshoremen's Association?

Mr. Vigderman: That's right, Your Honor.

The Court: You may proceed, Mr. Scanlan.

Mr. Scanlan: May it please the Court, we are here this afternoon in connection with the order which Your Honor entered in this case in September of 1965, the order having been entered on September 15, 1965.

Your Honor undoubtedly will recall that in that order you set forth that the defendant, International Longshoremen's Association, were ordered to comply with and to abide by an award of an impartial arbitrator, and under that award the employers on the waterfront had the right to set back gangs from an 8:00 o'clock start until 1:00 o'clock for any reason and without qualification.

The award has been complied with, Your Honor, from the time that it was entered up until Friday of last week, [fol. 6] and as a result of what happened since Friday until today, the entire Port of Philadelphia is shut down, and I would like to very briefly tell Your Honor what happened.

There were two employers who had hired gangs on Friday. These gangs were set back in accordance with the provisions of the contract and the arbitrator's award.

When the men reported at 1:00 o'clock they insisted upon being paid for four hours' pay in the morning. The contract and the arbitrator's award specifically provides that they are to receive one hour's pay for reporting in the morning and four hours' pay at 1:00 o'clock in the afternoon.

As a result the ships on which these men were to work remained idle on Friday, and on Saturday the men were ordered back again, and on Saturday they refused to work the ships unless they were paid for Friday morning, which they were not entitled to under Your Honor's order, the arbitrator's award and the contract.

On Saturday, in addition to walking off the job, these men went to other ships. There were two ships, as I understand it, at another pier, at Pier 98. The men went to those ships and they urged the men to walk off because

of the arbitrator's award, and the men who were ordered for those ships walked off. I believe that there were a total of nine gangs completely within the two ships at [fol. 7] Pier 96 and the other ships that were at Pier 98.

Now, as a result of that, the Port of Philadelphia was closed down for all practical purposes on Saturday. The representatives of the PMTA got in touch with the officials of the ILA and there was a meeting in the Bourse Building, in the office of the PMTA, which was attended by all of the officials of the defendant herein; that's the president and all of the delegates, and in addition to that, the International Vice-President, Mr. Moak.

At that meeting it was agreed that the action of the men in knocking off work on Friday and on Saturday was unauthorized and was in violation of the contract and of the arbitrator's award, and the union officials stated through the representatives of the PMTA that they would urge the men to go back to work on Sunday morning, that is, those men who had been hired for work on Sunday morning.

Now, on Sunday morning as I understand it, some of the officials of the union went down and urged the men to go back to work. However, the men did not go back to work, and a telegram was sent on Saturday to the officials of the defendant local, and I believe these telegrams are very important, Your Honor. If I may, I would like to read them to you.

[fol. 8] The first telegram that was sent—

The Court: Sent by whom?

Mr. Scanlan: Sent by the PMTA to Richard Askew, President of the International Longshoremen's Association, Local 1291, and copies of this telegram were also sent to the other members who are listed herein.

The telegram reads as follows:

"We confirm meeting held at noon today at PMT offices in the Bourse Building attended by yourself and Messrs. Moak"—he is the International Vice-President—"Smith,

Devine, Talmadge, Johnson, Kane, Carter and Huggins representing ILA Local 1291 and myself and Messrs. Sobelman and Muldoon representing PMTA at which time the current portwide stoppage was discussed. At this meeting it was agreed by all present that the basis of the dispute was the so-called setback provisions which were established by contract in February, 1965, and further sustained by an arbitrator's award of June 11, 1965. You and the other representatives of the Union agreed that while you did not like the arbitrator's award it ordered the present case. You stated further that you deplored the actions of the men in not working the vessels involved and more especially their further action in knocking off all vessels [fol. 9] throughout the port. You and the other representatives of the Union promised you would be at the hiring center tomorrow, Sunday morning, and do all possible in urging all longshoremen to return to work in accordance with the contract.

Now, as I said, Your Honor, I have been informed that representatives of the Union did appear at the hiring center on Sunday, and the men did not return to work.

Now, this morning some representatives of the union appeared at the hiring center, but the men also did not return to work.

Now, up to this point I want to make it clear that we assumed that the officials of the ILA were doing everything within their power to get the men to go back to work, and that they intended to abide by the arbitrator's award. However, this morning at approximately 11:00 o'clock, I believe, sometime this morning, the PMTA, the Executive Secretary of the PMTA, Mr. Alfred Corry, received this telegram which is signed by the following people: James T. Moak, who is the International Vice-President; and Clifford Carter, who is also an International representative of the defendant, ILA; Richard Askew, who is the President, and the following other officials; namely, T. A. Ryan; Joseph M. Kane; Norman Huggins; Joseph S.

Kane; Paul Johnson; Alexander Talmadge; and John H. Smith.

[fol. 10] Now, on the third page of the telegram there is also Edward Devine and Richard L. Askew.

The telegram reads as follows: It is addressed to Mr. Corry. It says:

"Your telegram of February 26 is completely incorrect and does not state the position of the Union. We have never conceded that Weiss' award in the prior case was applicable to the present situation or any other situation, but on the contrary have always stated that it applies only to the particular dispute which was involved in that case. We have urged our people to refrain to any work stoppage and advised that we intend to resolve the matter in accordance with the grievance machinery under our collective bargaining agreement. It is obvious that your telegram is a self-serving declaration and is intended to entrap the Union into perpetuating the infamous award of Mr. Weiss."

In addition to that telegram, at the same time this telegram was received, signed by Richard L. Askew, President, Local 1291, International Longshoremen's Association, addressed to Mr. Corry who was the Executive Secretary of the plaintiff, PMTA:

"This is to advise that we are invoking the grievance [fol. 11] procedure under Paragraph 28 of the"—it says "corrective" but it should be "collective"—"bargaining agreement to resolve the dispute regarding the setback of the longshoremen gangs on Friday, February 25, 1966. We demand that a grievance meeting be held immediately to work out the dispute regarding the setback of the longshoremen on Friday, February 25. Please communicate with the writer so that we can arrange a mutually satisfactory time as quickly as possible for this grievance meeting."

Now, Your Honor, I think it is quite clear that since the Union has sent these telegrams and are insisting upon

an arbitration that they were trying to do the same thing that they did when we were before Your Honor before, and that is to rearbitrate the award of Mr. Weiss. It is quite clear from the language of the telegram in which they say they are being entrapped into perpetuating the infamous award of Mr. Weiss and asking for another arbitration.

Now, the hearing that we had before Your Honor last time, I think, clearly pointed out that to insist upon re-arbitrating this issue would make a mockery out of the entire arbitration process. This issue was submitted on the basis of an interpretation of the collective bargaining agreement and it applied to all circumstances, and when the award was handed down, it had the effect of a judgment at law, and under the cases which we have cited in our brief before the Circuit Court of Appeals, it cannot be collaterally estopped where the same issue and the same parties are involved.

So now, what we thought the Union originally on Saturday and Sunday—we thought that this was primarily a wildcat strike and that the Union was doing everything in its power to correct the situation, but apparently our assumption was incorrect because actually what is happening here is the Union is trying to do what they did before. They do not want to abide by this award, and they do not want to comply with it, and on that basis, they are in violation of Your Honor's order which makes it very clear that they are required to abide by and to comply with the award.

So, Your Honor, this is an extremely urgent matter. It is extremely important as far as the entire Port of Philadelphia is concerned. I have been advised that there is anywhere between 25 and 35 vessels today that are not working, that are not working solely because of this action of the Union. There have been other vessels which have been diverted from this port because of this issue. At the present time we do not know how many vessels have

been diverted, but it is an extremely urgent matter. It is causing tremendous economic loss to our people and [fol. 13] therefore I would ask Your Honor to set a hearing at which time we would like to have the Union cited for contempt of Your Honor's order and have the Union fined an amount which would be appropriate under the circumstances.

The Court: We will now hear from Mr. Vigderman.

Mr. Vigderman: Your Honor, it has been and is the position of the Local Union and its officers in this incident that these men should go back to work and, as Mr. Scanlan said, they have done everything in their power and are doing everything in their power that the men go back to work.

Now, it is true as we set forth in our argument before the Court of Appeals that it is our position that each arbitration must rest upon its own facts and that the fact that an issue may overlap from one incident to another does not bind a party to the arbitration, to the award of the arbitrator from the prior arbitration.

Now, I am not going to re-argue what was argued before Your Honor in the other case. I might only say this, and I say this with all sincerity. The officers of this Union have done everything that is humanly possible to get these men to go back to work in order to avoid just what is happening here today.

- Now, these telegrams which were sent this morning were [fol. 14] sent, No. 1, to invoke the grievance procedure under the contract as was our position before Your Honor and before the Court of Appeals in the matter which will be argued next month in order that we demonstrate and make it clear and sincerely follow what we believe to be the proper interpretation of the contract.

However, that does not mean that we want the men not to go to work. This, to me and to the officers of the Union, should not have been done, and the men should have complied with the instructions of the officers.

Now, as to other telegram which was sent, it was sent because of the one statement in the telegram to the officers

of the Union that they agreed that the prior arbitration is binding on the present situation. Now, they may have agreed that the men should go back to work, but that's all that there was to the meeting, and the officers did say that they will make every effort to have the men go back to work, and they have done just that. The men, the officers of the Union, want to have this matter decided by the Court of Appeals, want to have it decided properly, and do not want in any way to tie up the port, especially under the present situation as it exists in world affairs today. We realize the importance of the situation, and the officers have done everything possible, everything that can be done, [fol. 15] and Mr. Scanlan will admit it, Mr. Corry will admit it, to see that the men go back to work.

Now, I don't know anything more that could be done to force these men to the grindstone.

The Court: Anything else to say, Mr. Scanlan?

Mr. Scanlan: Well, the only thing I want to say, Your Honor, is I certainly would not admit that the officers have done everything. I think up to a certain point we assume they have done everything, but certainly I think these telegrams that were sent today cast serious doubt as to their good intentions, and whether they have done everything, the telegrams speak for themselves, and it is quite clear they haven't done as much as they could have done, and I don't think it is proper to encourage these men to think that the matter should be rearbitrated, and therefore I don't think that they have done everything they should have done.

Mr. Vigderman: Your Honor, these telegrams were sent under advice of counsel in complete consistency with the position which we presented to Your Honor and to the Court of Appeals.

The Court: Counsel probably prepared them.

Mr. Vigderman: Oh, yes, but, Your Honor, yes, I want to say this, Your Honor, and I say this with as much sincerity as I can muster up: The officers did not want

[fol. 16] this to happen. The officers wanted the men to go back to work, because this matter is being decided properly in accordance with law, and this very incident is something the officers never wanted and have tried to stop every way they can, every one of the officers unanimously.

The Court: Well, we will issue a rule to show cause why they should not be held in contempt, hearing to be held tomorrow afternoon at 2:00 o'clock. Now, if you prepare that order in longhand we will sign it.

Mr. Scanlan: Very good, sir.

The Court: Now, then, the question as to who is to be held in contempt will be determined tomorrow.

Mr. Scanlan: Yes, sir.

The Court: But you prepare that now before we close court. We will sign it.

Mr. Scanlan: Very good, sir.

The Court: That will give everybody an opportunity to work this afternoon, tonight and tomorrow morning.

Mr. Scanlan: Yes, sir.

The Court: Now, I am scheduled, as you heard, with a jury case. Your matter will take precedence. Wherever we are in the jury trial, we will close down, unless we may have to hear some witness out of town or doctors or something like that. Of course, the other case might be settled. [fol. 17] You never know what happens with any sort of a case.

Write it out in longhand.

Mr. Scanlan: Your Honor, I have legal paper here, I mean yellow paper. Could we have regular legal paper or do you want me—

The Court: Write it on yellow paper. It is just as good.

Mr. Scanlan: Very good, sir.

The Court: The only problem will be, we won't have any copies; isn't that right?

Mr. Scanlan: I can have copies made, Your Honor. I can go back to the office and bring it down in about—

The Clerk: We have a machine that can make copies of that.

The Court: Is that a photostat?

The Clerk: Yes, sir.

Mr. Scanlan: We can have it photostated here, sir. I will write it out.

(Discussion off the record.)

Mr. Scanlan: Your Honor, I would like to read this to you and see if it conforms to Your Honor's instructions:

"ORDER

"And now, to wit, this 28th day of February, 1966, after [fol. 18] hearing, it is ordered that a rule shall be issued against the defendant, International Longshoremen's Association, Local 1291, to show cause why they shall not be held in contempt of court for violating the order of this Court issued the 15th day of September, 1965, returnable the first day of March, A.D., 1966, at 2:00 P.M. in Courtroom No. 5.

"By the Court:"

Mr. Vigderman: Your Honor, I would like to point out that he has in there, "and its officers," and the officers were not a party to this proceeding under which this motion is being brought.

The Court: The order is satisfactory as written.

Now, we can have photostats made of this.

Will you take them down and have photostats made and bring them back?

(Discussion off the record.)

The Court: Gentlemen, here we have the order. The Clerk will take the original.

There you are.

(Concluded at 2:30 P. M.)

[fol. 18a]

IN UNITED STATES DISTRICT COURT

ORDER—February 28, 1966

And Now, to wit, this 28th day of February, 1966, after hearing, it is hereby ordered that a rule shall be issued against the defendant, International Longshoremen's Association, Local 1291 and their officers to show cause why they shall not be held in contempt of court for violating the order of this Court issued the 15th day of September, 1965.

Returnable the 1st day of March A.D. 1966 at 2 P.M. in Courtroom No. 5.

By the Court:

Ralph Body, J.

[fol. 18b]

IN UNITED STATES DISTRICT COURT

DEMAND FOR JURY TRIAL—March 1, 1966

Defendant herewith demands a jury trial under the Constitution of the United States and under the Act of June 25, 1948, c. 645, 62 Stat. 844, 18 U.S.C.A. 3692.

Although this proceeding was not instituted against the officers of the defendant union, said officers have been included within the Show Cause Order of this Court. It is denied that the officers are parties in this proceeding, but if this Court should proceed in any wise against the individual officers, as indicated in the Order of this Court dated February 28, 1966, a jury trial, pursuant to the foregoing authority, is demanded on behalf of each and every one of the officers who may be enumerated by the Court, as well as on behalf of the defendant union. Said demand is without prejudice to assert any and all other defenses which have heretofore been or may hereafter be asserted, including, but not limited to, the jurisdiction of this Court.

Freedman, Borowsky and Lorry, By,
Attorneys for Defendant.

[fol. 19]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647

PHILADELPHIA MARINE TRADE ASSOCIATION,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 1291.

Transcript of Testimony—March 1, 1966

Philadelphia, Pa.

Before HON. RALPH C. BODY, J.

PRESENT:

DEASEY, KELLY & SCANLAN by FRANCIS SCANLAN, Esq.,
for Philadelphia Marine Trade Association.

FREEDMAN, BOROWSKY & LORRY by ABRAHAM FREEDMAN,
Esq., and MARTIN VIGDERMAN, Esq., for International Long-
shoremen's Association, Local 1291.

ORDER TO SHOW CAUSE

[fol. 20]

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: The Court is now ready to hear the matter
of the Philadelphia Marine Trade Association against In-
ternational Longshoremen's Association, Local 1291, No.
38647. I believe, Mr. Scanlan, you have the burden.

Mr. Scanlan: Yes, Your Honor, I do. I would like to call
my first witness.

Mr. Freedman: If the Court please, before any witnesses are called, we would like to know just what the nature of this proceeding is, what it is that is alleged. We would also like to make our objections to the Court timely before this hearing begins, if Your Honor decides to hold a hearing.

The Court: I have decided to hold a hearing and it is up to counsel to tell me what the matter is about. Your associate was here yesterday. You know what it is about.

Mr. Freedman: I know, Your Honor, but there are rules which govern this Court and every other Court in the United States, and one of them is, one of the basic rules is that when you plead something, you have to put it down on paper.

We have a right to know what it is that we are being accused of or what it is that they allege. We would like to answer and prepare ourselves for any possible cross examination.

I would also like to renew at this time the original motion [fol. 21] that I made; as a matter of fact, I will make it now, to dismiss on the grounds of jurisdiction. I would ask Your Honor whether Your Honor has examined the case of Sinclair versus Atkinson, a Supreme Court of the United States decision which clearly rules on the situation here, and says that Your Honor has absolutely no discretion, no right to entertain jurisdiction to enter an injunction in a case where you have a labor dispute, which is exactly what this is.

The Court: I don't share your views. Mr. Scanlan, will you proceed.

Mr. Scanlan: Yes, sir.

The Court: Your objection is noted.

Mr. Freedman: Your Honor, it is not just an objection. I understand that this is a contempt proceeding. That is as much as I know about the case. If it is, we demand a jury trial. I just filed a formal paper before Your Honor came in.

The Court: I overruled that.

Mr. Freedman: Well, the statute gives us the right to it, Your Honor. We have a specific right by statute to a jury trial. Your Honor is not going to take that away from us.

The Court: So you say. You are overruled. Will you proceed, Mr. Scanlan.

[fol. 22] Mr. Scanlan: Yes, sir.

Mr. Freedman: May I ask on what basis?

The Court: You are overruled. You will be seated, please.

Mr. Freedman: Your Honor, I would like to make an objection also on the ground that there is no pleading here, that there is nothing here to show us what it is they are alleging. My associate doesn't know what they are alleging either.

We are entitled to a specific pleading. We are entitled to specific allegations which we can either affirm or deny. We object to the entire proceeding.

The Court: I understand.

Mr. Freedman: Your Honor knows that it is required by the rules. We are entitled to this, Your Honor, at the very least.

The Court: I understand your position. The witness will be sworn.

Mr. Freedman: Well, does Your Honor disagree with my position about—

The Court: Yes.

Mr. Freedman: —about we being entitled to a pleading?

The Court: I have said the hearing is going on at this [fol. 23] time. Do you understand the English language, sir?

Mr. Freedman: I certainly do, sir.

The Court: I said we are going on with the hearing.

Mr. Freedman: Well, a hearing on what?

The Court: On the contempt proceedings.

Mr. Freedman: Well, if it is a contempt proceeding, the statute clearly spells out we are entitled to a jury trial. We have demanded it in writing.

We are also entitled to a pleading. If it is contempt, we are entitled to have spelled out the specific allegations, sir.

The Court: We will proceed with the hearing at this time. Mr. Scanlan.

Mr. Scanlan: Yes, sir.

The Court: The witness may be sworn.

Mr. Freedman: Let the record note that I am taking exception to Your Honor's ruling.

The Court: Exception has been granted. Your objection is noted and overruled.

[fol. 24] ALFRED CORRY, SWORN.

Direct examination.

By Mr. Scanlan:

Q. Mr. Corry, what is your position with the plaintiff in this action, the Philadelphia Marine Trade Association?

A. Executive secretary.

Q. And how long have you been executive secretary of the plaintiff association?

A. Since July 1, 1954.

Q. And you have testified in this action previously, is that not so?

A. I have.

Q. And, Mr. Corry, I ask you are you familiar with the order of the Court that was handed down in this action on September 15, 1965?

A. I am, yes.

Q. And that order related to the enforcement of an arbitrator's award, is that correct?

Mr. Freedman: Objection, Your Honor, the order speaks for itself.

The Court: The order speaks for itself.

Mr. Scanlan: Very good. The order is also a matter of record.

[fol. 25] By Mr. Scanlan:

Q. Now, Mr. Corry, will you—

The Court: Just so it is understood, as far as the Court is concerned, the Court is considering the entire record in this case and as part the proceedings to this date.

Mr. Freedman: I am going to object to that. We don't think under one caption in one case you can attach a whole string of independent actions which, in my judgment, have no relationship, no direct relationship, such as would enable Your Honor to attach them, to put them together. I would take formal objection to Your Honor's ruling.

The Court: We understand your objection, and it is overruled.

By Mr. Scanlan:

Q. Now, Mr. Corry, will you please tell His Honor what you know about the present dispute on the waterfront, starting with what you know, with what happened on Friday of last week?

A. On Friday morning—

The Court: Let's see, what date was that?

The Witness: I believe it was the—

The Court: The 25th?

The Witness: Yes, sir. On Friday morning, at approximately 7:30 a.m. in the morning, I received a telephone call—

[fol. 26] Mr. Freedman: What time?

The Witness: Approximately 7:30 a.m. I received a telephone call from Mr. Evans, our chief dispatcher at the hiring center, who advised me that Murphy Cook & Company had set back gangs to one o'clock that afternoon and that there was confusion there, that Mr. Smith of the ILA stated—

By Mr. Scanlan:

Q. Who is Mr. Smith, Mr. Corry?

A. Business agent of the ILA.

Q. And who is Murphy Cook & Company?

A. One of the members of the PMTA, the stevedoring company.

Q. All right, proceed.

A. That Mr. Smith had said to Mr. Evans that this was not applicable in this case here and they could not set back. I assured Mr. Evans that it was applicable and I asked to talk with Mr. Smith.

Mr. Freedman: Mr. Corry, would you please keep your voice up, sir?

The Witness: Yes.

The Court: Mr. Corry, you have a lot of competition with these fans. This morning we had difficulty hearing any of the witnesses.

Mr. Freedman: Can I have that last answer read back please?

[fol. 27] The Court: Yes, surely.

(The answer was read.)

The Witness: Mr. Smith got on the phone and I asked Mr. Smith what was the problem and he said the setback does not apply in this case, that it is another situation.

I asked him to elaborate on it and he just said it was another situation. I disagreed with Mr. Smith and told Mr. Smith that it did apply in accordance with the arbitration award, and that was the end of my conversation with Mr. Smith.

About 10:30 in the morning I happened to be down at the central dispatch office, and I met Mr. Mooock, the International vice president, who said that he had heard rumor of some problems at 98 with reference to the setback.

By Mr. Scanlan:

Q. When you say "98," you mean—

A. Pier 98 South.

The Court: Who did you meet?

The Witness: Mr. Mooock, the International vice president.

The Court: Spell his name.

The Witness: M-o-o-e-k. And we did not discuss that any further. I returned to the office and I attempted to contact Mr. Askew.

[fol. 28] By Mr. Scanlan:

Q. Who is Mr. Askew?

A. Mr. Askew is president of Local 1291, and to ask Mr. Askew what he knew about the situation, but he wasn't available. I did speak with Mr. Kane, who, I believe, is the treasurer or financial secretary. I am not sure.

Mr. Kane gave me a number to call Mr. Smith. I called Mr. Smith on the phone and I asked Mr. Smith if he would be at Pier 98 in the event that there was a problem, and Mr. Smith said that he would try to be there.

At about ten minutes past one I received a call from Mr. Tobin of Universal Stevedoring, who also had a ship at Pier 98 and who also had set back gangs from eight o'clock to one o'clock.

By Mr. Scanlan:

Q. How many gangs were set back on Mr. Tobin's ship?

A. There were a total of eight gangs, I think five on Mr. Tobin and three on Murphy Cook. Now, I could check my records for the exact amount. I think there was a total of eight gangs between the two ships.

Q. And how many men are in a gang?

A. A general cargo gang, 22 men. And Mr. Tobin told me that the men on his ship would not turn to, that is, would not go to work unless they were paid for the morning period.

[fol. 29] Q. Paid how many hours?

A. Four hours for the morning period.

Mr. Freedman: T-o-b-i-n, Tobin?

The Witness: That is right, sir.

By Mr. Scanlan:

Q. And under the contract, what are the men supposed to receive for reporting in the morning when they are set back at one o'clock?

Mr. Freedman: Objection, Your Honor.

The Court: Overruled.

Mr. Freedman: The contract speaks for itself, Your Honor.

The Court: Overruled. It is in the record.

By Mr. Scanlan:

Q. Would you answer that question, Mr. Corry?

A. When the setback is invoked, the men receive one hour for reporting in the morning plus an automatic four hours for the afternoon at one o'clock if they return to work. So about twenty minutes past one, Mr. Tobin and I proceeded to Pier 98 and we saw none of the officials there and from there we continued on to the dispatching center.

The Court: To the what center?

The Witness: The dispatching center, under the Walt Whitman Bridge. We were there a few moments when Mr. [fol. 30] Johnson and Mr. Devine, both business agents of Local 1291, came into the office.

I asked the two of them if they knew about the problem at 98, and they had told me they had just come from 98 but they had no knowledge of this particular problem.

I had a conversation with Mr. Johnson and Mr. Johnson said that he realized that the award—that they don't like the award but they have to live by it.

By Mr. Scanlan:

Q. What award is that, Mr. Corry?

A. The arbitrator's award on the set back.

Q. I see.

A. And he stated that he would be there on Saturday morning to do whatever he could to get the men to go to work.

On Saturday morning, between eight and 8:30, I don't recall the exact time, I received a call from Mr. Tobin telling me that the men refused to turn to unless they were paid for Friday. I went into the office—

Q. Now, Mr. Corry, may I stop you there?

A. Yes, sir.

Q. The gangs that were ordered back at one o'clock for Mr. Tobin's ship, did they report at one o'clock, do you know?

Mr. Freedman: If the Court please, I would like to interpose another objection to these proceedings. There is an [fol. 31] appeal pending from Your Honor's order. The entire record is in the Court of Appeals. The entire matter is now within the sole jurisdiction of the Court of Appeals and I think that for the additional reason, other than the ones I have advanced and others, Your Honor completely lacks jurisdiction to entertain this proceeding.

The Court: Overruled. Until the Court of Appeals has acted, my order still applies.

Mr. Freedman: Sir?

The Court: Until the Court of Appeals has acted, there is no supersedeas granted of any kind. My order applies.

By Mr. Scanlan:

Q. I will repeat my question. Mr. Corry, do you know if the men who were set back on Friday morning reported at the pier at one o'clock?

A. To the best of my knowledge they did, but they would not go to work unless they were guaranteed payment for the morning.

[fol. 32] Q. I see. Now, what were you testifying to with respect to Saturday, the next day?

A. On Saturday morning as I said between 8 and 8:30

A. M. I received a call from Mr. Tobin telling me that the

men did not turn to on his ship and nothing was working at Pier 98.

I then went into the office—

The Court: Now, let's see, I have forgotten who Mr. Tobin is.

The Witness: From Universal Stevedoring, sir.

The Court: Yes.

A. I went into the office and I arrived at the office shortly after 9 A. M.; and I started to receive calls that other vessels that were scheduled to work on Saturday, were being knocked off by longshoremen going up and down the waterfront, knocking the men off the ship, telling them to get off.

By Mr. Scanlan:

Q. Mr. Corry, do you know how many gangs were ordered to work for Saturday morning?

A. Yes, I have it here.

On Saturday morning, February 26, there were forty-eight gangs ordered and a total of fourteen ships involved.

The Court: How many ships?

The Witness: Fourteen ships that were scheduled to [fol. 33] work on Saturday morning, and a total of forty-eight gangs had been ordered on Friday for Saturday.

By Mr. Scanlan:

Q. Now, after you were informed that the ships were being knocked off on Saturday morning, what did you do?

A. I was talking with Mr. Muldoon, who is president of the Philadelphia Marine Trade Association, who was at 98 and talking with several of the officials down there, and a meeting was arranged with ourselves and the union for noontime on Saturday.

Q. Where was that meeting held?

A. In the offices of the Philadelphia Marine Trade Association.

Q. And who attended that meeting?

A. On behalf of the Philadelphia Marine Trade was Mr. Sobelman, our vice-president.

Q. Go ahead.

A. Mr. Muldoon, our president, and myself.

Q. And who attended that meeting on behalf of the union?

A. On behalf of the union, it was Mr. Moock, the International vice-president, Mr. Carter, also a vice-president, I believe, Mr. Askew, the four business agents, namely, Mr. Johnson, Mr. Talmadge, Mr. Devine, and Mr. Smith, Mr. Cane, and I believe a Mr. Huggins of—all of Local 1291 were present.

[fol. 34] The Court: Who is Mr. Askew?

The Witness: Mr. Askew is president of Local 1291, sir.

The Court: Any other officers there besides Mr. Askew?

The Witness: The four business agents and Mr. Cane and Mr. Huggins, and I believe their financial secretary or assistant financial secretary. I don't know exactly what their titles are, sir.

The Court: Thank you.

By Mr. Scanlan:

Q. Now, what happened at that meeting, Mr. Corry?

A. When the union came in, we sat down and discussed the situation, and the union stated that they realized that the arbitrator's award was in effect, they did not like the arbitrator's award, and they suggested that we renegotiate that portion of the contract, modify it in some way or another.

This we refused to do and we discussed the long—we discussed it further, and at the end of the meeting, it was my understanding, my complete understanding, that the union stated that they would be on the waterfront on Sunday morning to do whatever they could to get the port back to work.

Q. What time did that meeting break up?

A. Oh, 3:30, quarter of 4, in that neighborhood there, I guess.

[fol. 35] The Court: Did you say to start to work on Sunday morning?

The Witness: Yes, sir, we had gangs ordered for Sunday morning.

The Court: How many?

The Witness: There were nine ships scheduled to work on Sunday morning, a total of thirty-one gangs that were ordered.

Mr. Scanlan: I would ask the reporter to mark this telegram as P-1 for identification.

(Telegram dated February 26, 1966, was marked Exhibit P-1 for identification.)

The Court: P-1 is what?

Mr. Scanlan: It is a telegram which I will show to Mr. Freedman and have Mr. Corry identify.

The Court: Dated—?

Mr. Scanlan: It is dated February 26, 1966.

The Court: Thank you.

By Mr. Scanlan:

Q. Mr. Corry, after the meeting was concluded between you and the representatives of the PMTA and the representatives of the union, did you send the union a telegram?

A. I did.

[fol. 36] Q. Mr. Corry, I show you a telegram that has been marked P-1 for identification and ask you if you can identify it.

A. Yes, sir, this is the telegram.

Q. Would you please read for the record what the telegram says.

The Court: Not too fast, please.

A. All right.

This was addressed to Richard Askew, president, International Longshoremen's Association, 1291 Lafayette Building, Philadelphia, and copies of this telegram were

sent to all of the people that attended on behalf of the ILA at that meeting:

"We confirm meeting held at noon today at PMTA offices in the Bourse Building attended by yourself and Messrs. Moock, Smith, Devine, Talmadge, Johnson, Cane, Carter and Huggins representing ILA Local 1291 and myself and Messrs. Sobelman and Muldoon representing PMTA at which time the current port-wide work stoppage was discussed. At this meeting it was agreed by all present that the basis of the dispute was the so-called setback provisions which were established by contract in February, 1965, and further sustained by an arbitrator's award of June 11, 1965. You and the other representatives of the [fol. 37] union agreed that while you did not like the arbitrator's award it ordered the present case. You stated further that you deplored the actions of the men in not working the vessels involved and more especially their further action in knocking off all vessels throughout the port. You and the other representatives of the union promised you would be at the hiring center tomorrow, Sunday morning, and do all possible in urging all longshoremen to return to work in accordance with the contract."

By Mr. Scanlan:

Q. Now, Mr. Corry, how many gangs of men were ordered to work on Sunday; that was February 27?

A. On Sunday, there were nine ships that were scheduled to work and a total of thirty-one gangs.

Q. Did you receive any information regarding those gangs that were ordered for work on Sunday?

A. Yes, I received phone calls from the companies involved telling me that the gangs had not turned to and the ships were not working.

Q. Now, Mr. Corry, how many gangs of men were ordered to work on Monday, February 28?

A. There were twenty-two ships in port scheduled to work, and sixty gangs were ordered.

[fol. 38] By Mr. Scanlan:

Q. Now, on Monday, February 28th, Mr. Corry, were you at the hiring center or at any other place on the waterfront?

A. Yes, I was. I was—

Q. Where were you?

A. I first went to the hiring center, arriving there at about quarter of 7 in the morning.

The Witness: And I remained at the hiring center until approximately 7:30 A. M., and then went to Pier 98 South.

[fol. 39] By Mr. Scanlan:

Q. Now, while you were at the hiring center, did you see any of the officials of the defendant local there?

A. When I was at the hiring center yesterday morning, I saw Mr. Talmadge. He is the only one I remember seeing at the hiring center.

Mr. Freedman: What day was this?

The Witness: Yesterday, yesterday, the 28th.

By Mr. Scanlan:

Q. He was the only official of the defendant that you saw?

A. At the time that I was there, yes.

Q. Now, how long were you there, Mr. Corry?

A. Oh, I would say approximately a half hour, three-quarters of an hour.

Q. How many men were present at that time?

A. Well, it is hard to say. There were quite a number of them.

Q. What would your best estimate be?

A. Several hundred.

Q. Did you have any conversations with any representative of the union at the hiring center?

A. No, sir.

Q. What did you do after you left the hiring center?

A. I went to Pier 98.

[fol. 40] Q. And tell us what you saw at that point.

A. I waited there to see what would happen at 8 o'clock and I saw Mr. Johnson there and I saw Mr. Carter, I believe, that was also there, and then later on Mr. Mook.

Q. Did you have any conversations with those men?

A. No, sir.

Q. Did the men who were at the pier, at Pier 98, did they turn to and work the ships?

A. No, sir.

Q. How many ships, if you know, were at Pier 98 yesterday morning?

A. I think there were four or five. I have it here if you give me a chance to count it up.

There were six ships that I have here.

Q. That were at Pier 98 yesterday?

A. Between 96 and 98.

Q. Yes. And those ships were not worked; is that correct?

A. That is right, sir.

Q. Now, Mr. Corry, was there a meeting of the Philadelphia Marine Trade Association held yesterday morning?

A. It was.

Q. What time was that meeting held?

A. 11 A. M.

Mr. Scanlan: I would ask the reporter to mark this telegram [fol. 41] which is dated February 28, 11, addressed to Mr. Corry, as P-2 for identification.

(Telegram dated February 28 was marked Exhibit P-2 for identification.)

Mr. Scanlan: I would ask the reporter to mark this other telegram which is dated February 28, 11:15, and addressed to Mr. Corry, as P-3 for identification.

(Telegram dated February 28, 11:15, was marked Exhibit P-3 for identification.)

The Court: Whom was the first one addressed to?

Mr. Scanlan: The first one, Your Honor, was addressed to Mr. Corry. Both telegrams were addressed to Mr. Corry.

By Mr. Scanlan:

Q. Now, Mr. Corry, during that meeting of the PMTA yesterday, did you receive two telegrams from the union?

A. I did.

Q. Mr. Corry, I show you—

The Court: When you refer to the union, whom are you referring to?

Mr. Scanlan: The defendant union.

The Court: All right.

[fol. 42] By Mr. Scanlan:

Q. Mr. Corry, I show you two telegrams, one of which has been marked P-2 for identification, and ask you if you can identify that telegram.

A. Yes, I can.

Q. I also show you another telegram which has been marked P-3 for identification and ask you if you can identify that telegram.

A. Yes, I can.

Q. Now, Mr. Corry, referring first to the telegram marked P-3, will you read that for the record.

A. "Your telegram of February 26th, 1966, is completely incorrect and does not state the position of the union. We have never conceded that Weiss's award in the prior case was applicable to the present situation or any other situation but on the contrary have always stated that it applies only to the particular dispute which was involved in that case. We have urged our people to refrain to any work stoppage and advised that we intend to resolve the matter in accordance with the grievance machinery under our collective bargaining agreement. It is obvious that your telegram is a self-serving declaration and is intended to entrap the union into perpetuating the infamous award of Mr. [fol. 43] Weiss."

Q. Now, who signed that telegram, Mr. Corry?

A. James T. Moock, Clifford Carter, Richard L. Askew, T. A. Ryan, Joseph M. Cane, Norman Huggins, Joseph S. Cane, Paul Johnson, Alex Talmadge, John J. Smith, Edward Devine.

Q. Those are all officials of the defendant union?

A. Yes, sir.

Q. Now, Mr. Corry, will you read for the record the telegram that has been marked P-2.

A. "This is to advise that we are invoking the grievance procedure under Paragraph 28 of the collective bargaining agreement to resolve the dispute regarding the setback of the longshoremen gangs on Friday, February 25, 1966. We demand that a grievance meeting be held immediately to work out the dispute regarding the setback of the longshoremen on Friday, February 25. Please communicate with the writer so that we can arrange a mutual satisfactory time as quickly as possible for this grievance meeting."

Signed—

Q. Who signed that telegram?

A. Signed, Richard L. Askew, president, Local 1291.

Q. Now, Mr. Corry, how many gangs of men were ordered to work today, Tuesday, March 1?

[fol. 44] A. There were twenty-two ships in port scheduled to work and a total of sixty-five gangs were ordered.

Q. To your knowledge were any of those ships worked today?

A. No, sir.

Q. Now, Mr. Corry, can you tell us how many times the setback provisions of the contract were invoked from the time the contract was signed, which I believe was February 13, 1965, up until the time of the court's order in this case which was September 15, 1965?

A. Yes, sir, I can. I have it broken down several ways if you want me to—

Q. How do you have it broken down?

A. From the time that we signed the last agreement to Friday, to this past Friday, the setback clause was invoked seventy-two times. The setback clause was also—was invoked on three occasions before the final disposition of the arbitrator. That's from the inception of the new agreement until the time that the arbitrator ruled, it was only invoked three times.

It was invoked twenty-three times from the time the arbitrator submitted his award in June until the court order was issued in September.

Q. Now, Mr. Corry, how many times was the setback provision invoked from the time of the court's order in this case, September 15, 1965, up to Friday of last week? [fol. 45] A. Forty-six times.

Q. Now, Mr. Corry, did you request the members of the Philadelphia Marine Trade Association to submit to you an estimate of the damages which they have suffered as a result of this tie-up from Friday until today?

A. Yes, sir, I have.

Mr. Freedman: Objection, Your Honor. Up to this point nothing has been said about damages. Your Honor will now see not only the evil in our being utterly unprepared to predict what they were doing up until now, but now we have got damages in the picture. We are entitled to have these before us with all the discovery processes so that we can meet them.

The Court: You are a trial lawyer of long standing and a very able trial lawyer and you knew well enough, sir, that this would arise.

Objection overruled; exception noted.

Mr. Freedman: You mean, is Your Honor stating, that I will have to guess what they are trying to put into evidence?

The Court: No, but you knew this would arise.

Mr. Freedman: I could not know it.

The Court: Objection overruled; exception noted. I have ruled, sir.

[fol. 46] By Mr. Scanlan:

Q. Now, Mr. Corry, did you answer my question, first of all?

I will repeat it:

Did you request the members of the Philadelphia Marine Trade Association to submit to you their estimate of the damages that they have suffered from Friday of last week up until today?

A. Yes, I did.

Q. And have some of the members submitted those estimates to you?

A. Some of them have, sir, yes.

Q. Now, what is the total amount of the damages that have been sustained up until the present time based on the information which you have?

The Court: Don't answer the question.

Mr. Freedman: Objection, sir.

The Court: Don't answer the question.

Mr. Freedman: This is not the way to prove damages. First of all, it is not only hearsay, but any man who has incurred damages has got to get up and prove it and itemize it and show what damages, not only what damages he suffered, but expose himself to cross-examination. He can't testify to what somebody else told him what the damages happen to be.

[fol. 47] The Court: Well, I think you are right. Objection sustained.

Mr. Scanlan: If Your Honor please, so that Your Honor will know why I am engaging in this line of questioning, this is a contempt proceeding, as Your Honor well knows, and we are trying to bring out the amount of damages so that Your Honor will have it before you in connection with a fine which I will ask—

The Court: You understand, of course, I can't award any damages to any shipowner, stevedoring concern or pier owner or anybody concerned at this time.

Mr. Scanlan: Yes, Your Honor, and I am not asking for that, sir.

The Court: All right. In view of that I will—

Mr. Scanlan: I am only giving this information, sir, so Your Honor will have it before you.

The Court: I will assume the evidentiary value is entirely for me because it is based entirely on hearsay evidence, and Mr. Freedman will have a right of cross-examination of the people that gave you the information.

Mr. Scanlan: Yes.

Mr. Freedman: That doesn't make it admissible, sir. It can't make it admissible. Your Honor is only a human being and subject to all the frailties of human beings, one [fol. 48] of which is the hearsay rule.

The Court: You hear me. I don't know whether I will give it any evidentiary value at all.

Mr. Freedman: But Your Honor should not even hear it. Your Honor has no right to hear it.

The Court: If I choose to do so, I may do so, and I plan to do so, Mr. Freedman.

Objection overruled.

The evidentiary value is with me, my discretion, whether I want to do anything about it or not.

Mr. Scanlan?

Mr. Scanlan: Yes, sir.

The Court: Whether I will or not, I don't know. It depends on how the case turns.

Mr. Freedman: Exception, Your Honor.

The Court: You bet.

Mr. Scanlan.

[fol. 49] By Mr. Scanlan:

Q. Mr. Corry, what is the total amount of damages that were submitted to you up to the present time?

A. \$463,271.

Q. And how many companies have submitted their estimates to you?

A. So far there have been 24 different companies.

Q. Now, you have the estimates before you, I believe.

A. Yes, sir, I do.

Q. Will you please read the companies that have submitted the estimate and the amount for each company:

Mr. Freedman: The same objection, Your Honor.

The Court: The same ruling.

Mr. Freedman: To the entire line of examination.

The Court: Overruled.

Mr. Freedman: I think it is highly improper and most prejudicial. It is put in intended to influence Your Honor in some way, shape, or form, and this kind of hearsay evidence—

The Court: No, Mr. Freedman, I have tried cases before, and this won't influence me one way or another.

Mr. Freedman: Your Honor is still a human being. Your Honor knows that it is hearsay. No matter what the [fol. 50] purpose may be, it is still hearsay, and it is still inadmissible, and it is going to affect Your Honor one way or the other. Whether it affects you from the standpoint of damages or from some other standpoint, the fact is it is going to affect you.

The Court: Thank you for explaining it to me, but you did that before, and I have overruled you.

Mr. Freedman: Well, I have a job to do, Your Honor.

The Court: You are doing it very well, very nicely.

Objection overruled.

Mr. Freedman: Apparently it is not very nicely, because I don't seem to be having any effect on Your Honor.

The Court: Well, depending on what you say, it might have effect.

By Mr. Scanlan:

Q. Will you please answer my question, Mr. Corry:

A. Cunard Steamship Company, Ltd., \$100,000.

Lavino Shipping Company, \$75,000.

American Export Isbrandtsen Lines, \$64,420.39.

J. A. McCarthy, \$52,030.

The Court: On these amounts, these names do not ring a bell with me, whether it is a shipping company, a steve- [fol. 51] doring company, or what. Cunard is—

By Mr. Scanlan:

Q. Would you identify them for the Court.

A. Cunard is a steamship operator.

The Court: Steamship operator?

The Witness: Right.

Lavino are agents and stevedores.

American Export Isbrandtsen Lines are steamship owners and operators.

J. A. McCarthy are steamship agents and stevedores, as well as terminal operators.

The Court: What was the figure?

The Witness: \$53,030.

By Mr. Scanlan:

Q. Isn't that \$52,000, Mr. Corry?

A. I am sorry, \$52,030.

Norton Lilly & Company, steamship agents, \$21,562.48.

Farrell Lines, steamship operators, \$20,000.

States Marine Isthmian, steamship operators, they have \$9113.08 on one ship and \$9716.66 on another ship.

Moore-McCormack Lines, steamship operators, \$15,000.

Independent Pier Company, stevedores and terminal operators, \$12,255.

Stockard Shipping & Terminal, steamship agents and terminal operators, \$14,000.

B. H. Sobelman & Company, steamship agents and stevedores, I believe \$16,200.

Keystone Shipping Company, steamship agents, \$10,000.

Grace Line, steamship operators, \$5000.

Hinkins Steamship Agency—they are agents—\$2000.

National Sugar & Refining Company—that is the one uptown, where they have the sugar refinery, and they have \$2700 that it has cost them.

Texas Transport & Terminal Company, steamship agents, \$3500.

Rice Unruh & Company, steamship agents, they had two vessels involved, one \$2878.54, another vessel \$2250.

Murphy Cook & Company, stevedores, \$7500.

United States Lines, steamship operators and terminal operators, \$7000.

John C. Rogers, steamship agents, three ships involved, \$5650 on one, \$1600 on another one, and \$2100 on the third one.

Furness Withy, they are owners and agents, \$6000.

[fol. 53] Dichman, Wright & Pugh, steamship agents, \$9600.

Atlantic & Gulf Stevedores, Inc., terminal operators and stevedoring company, \$868.45.

Maritime Ship Cleaning & Maintenance Company, \$768.
I think that is it.

Mr. Scanlan: Cross examine.

The Court: Mr. Freedman.

Mr. Freedman: If the Court please, I would like to make it very clear for the record that by this participation in this proceeding I do not waive, we do not waive, any of the defenses which we have asserted or the right to a jury trial, which Your Honor has denied us.

And I would like to reiterate at this time the fact that we are at a tremendous disadvantage in not knowing—

The Court: I have heard you on that. You don't need to repeat. I have heard you.

You may proceed with the cross examination, if you have any. If you have any objections, you may make them for the record.

Will you be seated, Mr. Corry, and examine the witness from the chair.

[fol. 54] Mr. Freedman: It is customary out of respect for the Court, I never sit when I address the Court.

The Court: Well, stand back by the chair then. I fix the rules in this Court, sir, and not you.

Mr. Freedman: I wasn't attempting to. I was simply following the course—

The Court: Yes, you were.

Mr. Freedman: I have never sat when I addressed the judge and I don't intend to.

The Court: Very good. Will you proceed.

Cross examination.

By Mr. Freedman:

Q. Mr. Corry, are you aware of the efforts of the ILA officers to get these men back to work?

A. As I stated before, Mr. Freedman, when we left the meeting on Saturday—

Q. Would you keep your voice up a bit, please.

A. When we left the meeting on Saturday, they assured us that they would do everything to get the men back to work. I can only testify to what I actually witnessed on Monday and today, and at no time did I hear any of the business agents or the officials direct the men to go to work.

Q. Didn't you hear many speeches or weren't you aware that almost every one of the agents made speeches and [fol. 55] urged the men, with all the vigor at their command, to return to work?

Mr. Scanlan: Objection.

The Witness: I did not hear any speeches, sir.

The Court: Overruled.

By Mr. Freedman:

Q. You didn't personally hear them?

A. No, sir.

Q. Are you saying you are not aware of any of the speeches made by any of the officers?

A. I said when I was at the waterfront today and yesterday, I did not hear any official make any speeches to any of the men urging them to go to work.

Q. You were on the waterfront just for a brief period. Now, are you saying that you don't have knowledge of any statements which the union officials made to the men repeatedly and the efforts which they made to get these men back to work?

A. You said I was there for a brief period, Mr. Freedman. I was there this morning until 8:30, twenty minutes to nine, at Pier 98 from about ten after seven this morning

until that time, and yesterday, when I arrived at Pier 98, at 7:30, I didn't leave there until about 8:30.

Q. What about Friday and Saturday?

A. I did not hear them. I wasn't there.

Q. And you are not aware of any statements which the [fol. 56] union people made?

A. No, sir, I am not.

Q. Don't you know that Mr. Askew made about a dozen speeches to the men at different places in an attempt to get them back to work?

Mr. Scanlan: Objection, sir.

The Court: He may ask that question. Overruled. Does he know whether or not Mr. Askew made a dozen speeches—

Mr. Freedman: That is all I am asking.

The Witness: I do not know.

By Mr. Freedman:

Q. Didn't you hear about it?

A. I did not.

Q. Don't you know that every one of the other agents and officials from time to time addressed the men at different places in an attempt to get them back to work?

A. I did not hear them. I did not see them.

Q. Well, don't you know that the union officials even went so far as to distribute all along the waterfront pamphlets which urged the men in the strongest terms to go back to work and settle their problems?

A. This morning I was given a pamphlet by Mr. Smith. I was given a pamphlet that was being distributed by Mr. [fol. 57] Smith this morning at Pier 98.

Q. Have you got that pamphlet?

A. I don't have it on me.

The Court: Do you have it with you in court?

The Witness: No, I don't have it with me, sir.

The Court: Mr. Scanlan, do you have it?

Mr. Scanlan: Yes, I have a copy of one, I believe, sir.

The Court: Is that the one that was given to the witness?

The Witness: The one Mr. Smith gave me, I can tell when I see it. In fact, he gave me several copies. Yes, this is the one Mr. Smith gave me this morning. He gave me several of them.

Mr. Freedman: Would you mark this for identification, please.

(Single-page document dated February 28, 1966 was marked Exhibit No. R-1 for identification.)

The Court: The pamphlet is dated what, please?

By Mr. Freedman:

Q. Tell us the date it has.

A. February 28, 1966.

The Court: Thank you. You are asked to read it now.

[fol. 58] By Mr. Freedman:

Q. That was yesterday?

A. This was this morning.

Q. It is dated yesterday.

A. It is dated yesterday, and it was given to me this morning.

Q. All right, go ahead.

A. "Attention: Members of ILA, Local 1291.

"Your officers are unable to understand how some waterfront politicians can convince our members that our present contract is so bad, when the fact of the matter is that the longshoremen in the port of Philadelphia now have the best contract of any longshoremen in the country, bar none. The only longshoremen who have a contract that even comes close to ours are the longshoremen in the Chelsea section of New York. Our contract provides for—"

[fol. 60] The Witness: "Our contract provides for:

"1. Basis wage rate of \$3.46 per year.

"2. 11 paid holidays—this amounts to \$304.48 per year.

"3. One week's vacation for 700-hour men. This amounts to \$138.40 per year.

"4. Two weeks' vacation for 1100-hour men. This amounts to \$276.89 per year.

"5. Three weeks' vacation for men who have worked 1300 hours and worked 700 hours in five or six previous years. This amounts to \$415.20.

"6. Four weeks' vacation for men who have worked 1500 hours and who worked 700 hours in ten of twelve previous years. This amounts to \$553.60 per year.

"7. A increase in the monthly pension from \$100 to \$175, effective January 1, 1965.

"8. A monthly pension of \$87.50 for widows and dependent mothers for life, effective January 1, 1965.

"9. Increased welfare benefits, including major medical benefits up to \$10,000 for a man and his family and dependent mother.

"10. A guaranteed annual wage which will be improved as time goes on.

"11. Day-before hiring so that our men do not have to shape up every morning.

"12. A new hiring hall, heated, with all conveniences. This will be ready next week.

"All of the above was accomplished by your officers because we have in the past demonstrated that ours is a responsible union. We must tell our membership with all sincerity at our command that this business of men who may have a dispute on one ship or on two ships or on three ships going out and knocking the port off can only cause great peril to the union. Every day in the week there is some dispute in the port on some ship or ships, and if the longshoremen are going to knock the port off every time there is a dispute on a ship, the men will always be out of work.

"The employers went into Court in September, 1965, when there was a dispute with Nacirema over the push-[fol. 62] back. Your officials took the position that the arbitrator's award was a one-shot opinion and was not binding in other disputes. Judge Body held that the arbitrator's award was binding. He handed down his order on September 15, 1965. Our lawyers filed an appeal with the United States Court of Appeals on September 16, 1965, the next day. That appeal is scheduled to be argued on April 14, 1966, next month.

"Your officials agree that the employers are abusing the men with this push-back. We are doing everything possible to change this ruling, and we don't intend to stop it until it is changed. We do say, however, that knocking off the port is not the way to change it."

"We have sent telegrams to the PMTA to set up a meeting to try to work out a solution to this dispute.

"We again urge our members to return to work while we work this out."

Signed, "The Executive Board, Local 1291, ILA."

By Mr. Freedman:

Q. Now, Mr. Corry, I show you another pamphlet dated February 26, and ask you to read that to the Court.

A. "Members of Local 1291, ILA:

"Because several companies pushed back gangs on Friday, February 25, 1966, those gangs refused to turn to that [fol. 63] afternoon at 1:00 p.m. and also the same gangs refused to turn to on Saturday morning, February 26th.

"These men then proceeded to go to the piers throughout the Port and knock off about forty other gangs that were working.

"This protest by our members grew out of resentment to a ruling made by Milton M. Weiss, Arbitrator, that the employers could invoke the push back for any reason whatsoever.

"All of your officials, including our International Vice President, Mr. James T. Moock, fought vigorously in the arbitration proceeding in an effort to persuade the arbitrator as to the true intent of the negotiators. Nevertheless he did rule against us.

"When Mr. Weiss made this ruling, all of your officials felt that his decision was a flagrant miscarriage of justice. Our feelings have not changed one iota since that time. We were convinced, and we remain convinced, that the Arbitrator's decision did not represent the intent of the negotiators.

"We know, and all of our men know, that there are arbitration provisions in every labor contract of any importance and we also know that an arbitrator, like any other [fol. 64] judge, is not infallible and will make some good decisions and some bad decisions. Since we are governed by the rule of law we must accept these decisions until they are reversed—or run the risk of getting into serious trouble.

"We are taking an appeal from the Arbitrator's ruling with the hope that we can get it set aside or modified to the extent that our men will not have to come to a ship at 8:00 o'clock in the morning and then be told that they are pushed back until 1:00 o'clock.

"We never intended that kind of thing in the negotiations, and we do not believe that we did not convince the Arbitrator of that fact.

"The following named I.L.A. officials urge all of our men to return to work and allow this dispute to be settled through proper channels.

"James T. Moock, International Vice President

"Clifford Carter, A.C.D. Vice President

"Richard Askew, President Local 1291

"Joseph S. Kane, Asst. Fin. Sec'y

"Norman Huggins, Sec'y-Treas.

"John Smith, Business Agent

"Paul Johnson, Jr., Business Agent

"Alex Talmadge, Business Agent
"Edward Devine, Business Agent."

[fol. 65] Mr. Freedman: Will you mark this one R-2, sir.

(Document headed "Members Of Local 1291, ILA," was marked Exhibit R-2 for identification.)

By Mr. Freedman:

Q. Mr. Corry, you said that you saw Mr. Talmadge at the dispatching office when you went there. What date was that?

A. I believe it was yesterday morning.

Q. Yesterday morning? Did you see Mr. Talmadge?

A. Did I see him?

Q. Yes.

A. I said I saw him.

Q. Did you see what he was doing?

A. He was at the dispatching counter.

Q. What was he doing?

A. He was dispatching longshoremen.

Q. Did any ships work that day?

A. Yesterday?

Q. Yes.

A. No, sir.

Q. Mr. Talmadge is an agent of the ILA, the defendant union here, is he not?

A. Yes, he is.

Q. What was your last answer; did you say the ships did or did not work that day?

[fol. 66] A. Did not, to the best of my—in fact, I know they did not work yesterday.

Q. You are sure that no ships worked yesterday?

A. To the best of my knowledge, no ships worked yesterday.

The Court: Let's see, yesterday was Monday; right?

The Witness: Monday.

By Mr. Freedman:

Q: What about Sunday?

A. There was one ship at 179 that had about four or five hours' work, and I believe that ship did work, although—and I believe there was a grain ship that also worked.

Q. Is that all?

A. To the best of my knowledge, yes.

Q. There weren't any other ships working?

A. To the best of my knowledge.

Q. That's what I am testing, your knowledge.

That's all.

The Court: Any redirect, sir?

Mr. Scanlan: No, sir.

The Court: Step down, please.

The next witness.

Mr. Scanlan: Mr. Muldoon.

The Court: Leave the papers up here. They belong in [fol. 67] evidence.

The Witness: I am sorry. I forgot.

The Court: Wait a minute, and also the items which you read from, no, just the—

Mr. Scanlan: Just the pamphlet.

The Court: —the pamphlets that were marked by Mr. Freedman.

Mr. Scanlan: Mr. Freedman's pamphlets.

The Court: You have them?

Mr. Freedman: I would ask Your Honor's permission, I would like to have permission to reproduce it and offer it.

The Court: Let them up here and remove them at the end of the hearing.

Mr. Freedman: Surely.

The Court: You don't want to do it right this minute, do you?

Mr. Freedman: No.

The Court: All right. Maybe if you want to keep it at counsel table, there is no objection as far as I am concerned.

Mr. Freedman: No, it is all right. I wanted to look at it and reproduce it, and put in a copy. It is just for identi-

fication; it wasn't in evidence yet. It doesn't matter.
[fol. 68] The Court: All right.

Swear the witness, please.

Mr. Freedman: I left it there, Your Honor, if he wants to see it.

FRANCIS MULDOON, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Scanlan:

Q. What is your position with the plaintiff association, the Philadelphia Marine Trade Association?

A. President, Philadelphia Marine Trade Association.

Q. And—

Mr. Freedman: Would you keep your voice up a bit, Mr. Muldoon?

By Mr. Scanlan:

Q. —in addition to being president of the Philadelphia Marine Trade Association do you hold any position with a company which is a member of the Marine Trade Association?

A. President of J. A. McCarthy, Incorporated.

Q. And what type of work does J. A. McCarthy, Incorporated, do?

[fol. 69] A. Agents, stevedores, terminal operators.

Q. Now, Mr. Muldoon, what piers are operated by J. A. McCarthy, Inc., for its subsidiaries?

A. Piers 96, 98, 100, South, south side of Pier 82, South.

The Court: Wait a minute, you are going a little too fast.

The Witness: Excuse me.

The Court: I am not taking it in shorthand. Just talk in the general direction of counsel, not in my direction.

Pier 96, 98—

The Witness: 100 South.

The Court: Yes.

The Witness: —the south side of Pier 82, South, and the south side of Pier 78, South.

The Court: Thank you. All right.

By Mr. Scanlan:

Q. Now, berths are available for the docking of ships at Pier 96, South?

A. On the north side of Pier 96, South, there are two berths, and on the south side, either two or three, depending on the size of the vessels.

Q. And how many berths are available at Pier 98, South?

A. On the north side of Pier 98, South, three; on the [fol. 70] south side of Pier 98, South, three.

Q. Now, Mr. Muldoon, on Friday of last week, was there a vessel docked at Pier 96 that was being worked by Mr. Tobin of Universal Stevedoring Company?

A. Yes, there was a vessel of the States Marine, Isthmian Company, at the north side of Pier 96, South.

Q. Was there also a vessel at Pier 96, South, that was being stevedored by Murphy-Cook & Company?

A. Yes, Cunard Line had the SS "Rikke Skou."

Q. Now, do you know, Mr. Muldoon, if those two vessels were the vessels on which the gangs had been set back for a 1 o'clock start on Friday afternoon?

A. Yes, they are the two vessels.

Q. Now, were you at Pier 96 or Pier 98 on Saturday morning?

A. Yes, I was.

Q. Would you tell His Honor what you saw at that time.

A. I arrived at Pier 98 shortly after 8 A. M. and there was a sizable group of men milling around the front gate. I would estimate—

Mr. Freedman: Mr. Muldoon, would you please keep your voice up just a little.

The Court: Just a little louder. You have a lot of competition from the fans, Mr. Muldoon.

The Witness: Thank you.

[fol. 71] The Court: And you are in a large room. If you talk too loud, I will stop you.

A. There was a sizable group of men at the entrance of Pier 98, South, some two—two hundred fifty men, I would estimate, and they were milling around, and as I drove through the gate, one of the men who worked for us stopped my car and informed me that these men were assigned to vessels at Pier 96, South, and the vessels were not working, and I continued on with my business.

We had a vessel working at the south side of Pier 98, South, and I visited that ship, and then went around to a ship on the north side of 98, South, which we were working, and visited that vessel.

At about a quarter of 9, a boisterous group of men, in number I estimate about two hundred, came down the north side of Pier 98, South, and knocked off our vessel there, the M/S "Horda."

They continued around to the south side of 98 and I understand knocked off the SS "Monterey" that was working there:

By Mr. Scanlan:

Q. How many gangs had been working on the first vessel that was knocked off at Pier 98?

A. The M/S "Horda" had five gangs working.

[fol. 72] Q. And how many gangs were working on the second vessel that was knocked off at Pier 98?

A. The SS "Monterey" had four gangs working.

Q. They were all twenty-two men in a gang?

A. Yes, sir.

Q. What happened after these two vessels were knocked off at your terminal?

A. I went to the office on the second floor of our pier and informed our uptown office of the proceedings.

I went back on board and advised the master of the M/S "Horda" of the situation as I understood it then and told him that I would get word back to him when I could define it more clearly and would know a little better what he could expect insofar as resumption of work on his ship.

I returned to our pier office and made a few telephone calls and then went over to the main gate of the pier. There were still some men there, and I saw Mr. Askew, the president of 1291, and Mr. Moock, the International vice-president, and Mr. Talmadge, and I think Mr. Carter, the International vice-president, was there, and we discussed what was going on and what could be done to solve the work stoppage.

Mr. Askew said that he was going into the restaurant and talk to the men and I followed in shortly thereafter, and he was addressing the men and I also spoke to some [fol. 73] of the men in there and we discussed the stoppage.

Q. Did you have any conversations with any of the men at that time?

A. Yes, I spoke to many of the longshoremen there. Some were under the impression that there was no signed contract at this time and therefore gave me the impression that this thing was still open for some further negotiation.

I explained to them that we did have a signed contract and further that it had been supplemented by an arbitrator's award which they didn't seem to be very familiar with, and I attempted to explain it to the best of my ability.

I pointed out that if we didn't have a signed contract, the arbitrator would not have been able to make an award because the provision in question, that is, Section 10, Subparagraph 6 of our new agreement, which is the clause which relates to the setback provision, is new in the present agreement and had the arbitrator only had the old agreement to rely on, then he couldn't have made a decision on the setback privilege based on 10-6.

Mr. Askew suggested that we get together in Mr. Corry's office at noon, and I agreed to meet him there at that time,

and I had one of my men phone Mr. Corry and suggest that he contact Mr. Sobelman and that we would meet with the union at 12 noon in the PMT offices.

[fol. 74] Q. Did you meet with the union at that time?

A. Yes, sir.

Q. What transpired at that meeting?

A. Mr. Askew opened the meeting and made a lengthy statement. He said that I had suggested a meeting.

Actually I thought it was the other way around, but I didn't belabor the point because I thought it was incumbent on both of us to do whatever we could to solve this problem.

At that time he stated quite clearly that he deplored the actions of the men in not working the vessels involved, and he had no sympathy at all with the further actions of the men in doing what they did to our own vessels and, of course, every other vessel in the port that was visited by these longshoremen who forced the other men to abandon their work.

Some of the representatives of the ILA who were present at that meeting suggested that the problem could be solved by amending the present 10-6, and we said that under no circumstances were we there to renegotiate the contract and, in fact, we refused to renegotiate the contract, the contract was binding on both parties for the duration, and that we would stand on that point.

Mr. Askew agreed that they had an award which he didn't [fol. 75] think very much of, was binding on them, and they intended to live by it, and further that he and his associates would do all possible in going down to the hiring center the following morning and getting these men to go back to work in accordance with our contract.

I would say that was about the substance of the meeting.

Q. Now, after this meeting was over did you participate in drafting the telegram which has been marked P-1 and which was forwarded to the union?

A. Yes, after we left the union, we met further in Mr. Corry's office, and I suggested that we send such a message to the union confirming what had been discussed in that meeting.

Mr. Sobelman and Mr. Corey and I got together and worked up the phraseology that was used.

Q. And to the best of your knowledge does the contents of that telegram confirm the understanding that was reached at that meeting?

A. Yes, sir.

Q. Now, were you at the piers at all on Sunday morning?

A. No, sir.

Q. Do you know whether or not the vessel that has been testified to by Mr. Corry that was worked by Mr. Tobin's company, the vessel that was at Pier 96, do you know [fol. 76] whether that was worked on Sunday morning?

A. No, it was my understanding that that ship sailed on Saturday.

Q. How about the vessel that was stevedored by Murphy-Cook & Company?

A. Yes, I know that that vessel did not work; it was there on Sunday.

Q. And it did not work?

A. Yes.

Q. Now, were you at the piers on Monday morning, yesterday?

A. Yes, sir.

Q. And what did you see?

A. Well, there was a larger group milling around the main gate when I arrived there at what I judge would be about 8:15 and—

The Court: A larger group than what?

The Witness: Than on the Saturday work stoppage, and I drove in and discussed with Mr. Corry and some of the other members there the problem that we faced.

I was informed that none of the vessels in the terminal were working and was given to understand further that none of the ships throughout the port were working.

By Mr. Scanlan:

Q. Did you see any of the officials of the defendant union [fol. 77] on Monday morning?

A. I think that Mr. Johnson was there on Monday morning, and I am not sure. I think I also saw Mr. Moock there. I did not have any direct contact with them. I think Mr. Carter may have been there also.

Q. Now, were you at the piers today?

A. Yes, sir.

Q. What did you see today?

A. A similar situation, a large number of men milling about the main gate of Pier 98, South, and, of course, learned upon arrival that no vessels were again working today and that the situation was similar to yesterday throughout the port.

Q. Did you see any of the officials of the defendant union at your pier today?

A. I know that I saw Mr. Moock there today. I had no direct contact with him, and I don't recall seeing any of the other officials.

Oh, yes, excuse me, as I—shortly after I drove in, a car drove out in which I recognized Mr. Askew, and I couldn't tell who was with him, but there appeared to be two or three other officials in the car with him.

Mr. Scanlan: Cross-examine.

[fol. 78] Cross-examination.

By Mr. Freedman:

Q. I take it, Mr. Muldoon, that you have been on the waterfront quite frequently since this problem arose on Friday; is that right?

A. I was there on Saturday, I was not there on Sunday, I was there on Monday, and I was there this morning.

Q. Were you there on Friday?

A. Earlier in the morning when I didn't know the problem existed.

Q. Were you present at any of the times when any of the union officials addressed the men in an effort to get them back to work?

A. At any time that I saw union officials at Pier 98, they were talking to small groups of men, and what they said couldn't be heard above the noise of the crowd.

Q. But did they attempt to conceal what they were saying?

A. I made no effort to find out about it.

Q. But they didn't attempt to conceal what they were saying, did they?

A. I wouldn't know whether they did or not, sir.

Q. How far away were you standing?

A. Possibly from here to you, sometimes further, of course.

Q. Did you attempt to talk to any of the other men other [fol. 79] than those few that you talked to originally to find out why they weren't working?

A. I would say that each day I talked to some of the men, yes.

Q. And, now, when was the last time you talked to them?

A. This morning.

Q. And to whom did you talk then?

A. I am not sure who they were, sir.

Q. Where did you talk to them?

A. At Pier 98, South.

Q. Do you know whose men they were? Were they your men?

A. No, they were not my men, sir.

Q. Do you know whose men they were?

A. No, I do not.

Q. Did they give you any reason for staying out?

A. No, they said that they didn't know why they were out.

Q. Who said this, now?

A. The longshoremen.

Q. You have been on this waterfront how long?

A. Since 1947.

Q. And you are pretty familiar with virtually all of the longshoremen on the waterfront, if not by name at least you can identify most of them, can't you?

A. Mr. Freedman, on Saturday morning, I saw two hundred men come down the north side of 98. It took them a minute and a half to knock off the "Horda," and I couldn't tell you one of them.

Q. Mr. Muldoon, you served on many of the panels like Pension and Welfare and some of the others having to do with the various remedies and benefits which are given to the men, and you have to identify these men, do you not?

A. I don't serve on the Pension or Welfare Trustees' Group, I suppose you mean.

Q. But don't you serve on any of the panels?

A. No, sir.

Q. How about the panels which have to do with identifying the men for the court and so on?

A. I don't know what panels they are. I don't serve on them, whatever they are.

Q. And you say that you are not familiar with the vast majority of the men on the waterfront, even though you have been there since 1946?

A. I would say that, sir, yes—1947.

Q. You did talk to Mr. Askew on one occasion, did you not?

A. Yes, on Saturday morning.

Q. Now, at that time you heard him address a group of longshoremen?

A. Yes, in the restaurant.

[fol. 81] Q. Did you hear what he said?

A. Yes.

Q. What did he say?

A. He urged the men to return to work, that we had a contract and they should abide by it. We had an arbitration award, even though it was not fair from his viewpoint; it was binding.

Q. Did he sound like he meant it?

A. Yes, he sounded very sincere.

Q. As a matter of fact, if I may refresh your recollection, Mr. Muldoon, was it not you who suggested to Mr. Askew that you have a meeting after you heard him address the men on one occasion?

A. No, we agreed to have the meeting. I only heard him address the men on the one occasion, and we agreed to have the meeting actually as he was going into the restaurant.

Q. Well, wasn't it you who suggested the meeting?

A. Well, he said it was; I say it was him.

Q. He has already told you you said it, I take it, from what you said now?

A. Yes, in his opening statement in our meeting Saturday afternoon, he opened by saying I suggested the meeting. I didn't feel that it was an important point.

Q. Except for the fact that you were impressed by what [fol. 82] Mr. Askew was saying to the men and you wanted to have a meeting with him?

A. You are saying that; I am not.

Q. Sir?

A. You are saying that; I am not.

Q. Well, is it untrue?

A. As I said earlier, I asked—and Mr. Askew and Mr. Carter and Mr. Talmadge and perhaps Mr. Mooch was there, and I am not sure—we were discussing what could be done about this, and it was at that time I say that Mr. Askew said that he felt it in the best interest that we get together as soon as possible in Corry's office. I took it from that that he was asking for a meeting.

Q. On how many other occasions would you say you heard any of the union agents address the men?

A. As I said, I couldn't hear them on any other occasion.

Q. Well, on how many other occasions did you ever see any of the union officials address the men?

A. I was at the waterfront on Saturday and we have discussed that. I saw and heard Mr. Askew in the restaurant on Saturday morning.

On Monday morning, Mr. Mooch, I believe, was with a small group of men—

The Court: What do you mean by "small"?
[fol. 83]. The Witness: Possibly less than twenty—and I was from here to you away, and it was in a conversation tone. I did not hear what was said nor did I attempt to hear what was said.

By Mr. Freedman:

Q. Well, what I am asking you now is, on how many other occasions did you see any of the union officials address the men?

A. What do you mean by that?

Q. Well, you said that on one occasion you saw a union agent, a union official, speaking to some of the men, but you were a little too far away to hear it.

Isn't this what you said?

A. Yes, I just said that on Monday morning.

Q. Yes. Is that the only occasion when you saw any of the union officials address the men since Friday?

A. No, this morning Mr. Moock was again there with a small group of men, again less than twenty, speaking with them, if that is addressing them.

Q. Did you ever see Johnny Smith address any of the men?

A. No, sir, I don't recall seeing Mr. Smith at the pier.

Q. How about Paul Johnson?

A. I think I saw Mr. Johnson there one day.

Q. Where was this?

A. At Pier 98, South.

[fol. 84] Q. Did you hear what he said at all?

A. No, I did not, sir.

Q. How far away were you?

A. Maybe the width of this courtroom.

Q. Did you try to get any closer to hear what he was saying?

A. No, sir.

Q. Weren't you interested?

A. I thought that if he was addressing the crowd, I could hear him from where I was.

Q. Did he try to conceal what he was saying?

A. Oh, I don't know, sir.

Q. What about Eddie Devine, did you hear him address any of the men?

A. I don't recall seeing Mr. Devine there.

Q. What about Alex Talmadge?

A. No, I did not hear Mr. Talmadge address any of the men.

Q. Did you see Mr. Talmadge or any of the others—

A. Yes, I had a discussion with Mr. Talmadge in Mr. Aske's presence on Saturday morning.

Q. I mentioned all of the agents, did I not?

A. Pardon me, sir?

Q. I think I mentioned all of the other agents?

A. I don't know whether you did.

Q. Was there any you saw addressing the men? Mr. Cane?

[fol. 85] A. Not that I recall.

Q. And on that one occasion you didn't see Mr. Moock address any of the men, either?

A. As I said earlier, he was talking to some of the men, this morning he was talking to a group of men.

Q. I say except—other than on that one occasion—you didn't see Mr. Moock address any of the men?

A. Not that I recall.

Mr. Freedman: That's all.

The Court: Any other questions?

Mr. Scanlan: No redirect, sir.

The Court: The witness may step down. Thank you, sir.

The Witness: Thank you.

Mr. Scanlan: Mr. Sobelman.

STEWART SOBELMAN, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Scanlan:

Q. Mr. Sobelman, what position do you hold in the plaintiff association, the Philadelphia Marine Trade Association?

A. I am vice-president of the Philadelphia Marine Trade [fol. 86] Association.

Q. Are you also a member of the Philadelphia Marine Trade Association?

A. My company is a member, yes.

Q. What is the name of your company?

A. B. H. Sobelman & Company, Incorporated.

Q. And what type—

The Court: What is it?

By Mr. Scanlan:

Q. What type of work do you do?

The Witness: B. H. Sobelman & Company, Incorporated.

By Mr. Scanlan:

Q. What type of work does your company do?

A. The firm attends to steamship agencies, stevedoring, clerking and checking.

Q. And what position do you hold in that company?

A. President.

Q. Now, Mr. Sobelman, did you attend the meeting on Saturday at noontime, around noontime, in Mr. Corry's office?

A. Yes, I did.

Q. And who was present at that meeting?

A. Representing the Philadelphia Marine Trade were Mr. Corry, Mr. Muldoon and myself.

[fol. 87] Representing the local, 1291, were Mr. Askew, the four agents, Messrs. Johnson, Smith, Talmadge, and Devine, Mr. Huggins and Mr. Cane were present, Mr. Moock and Mr. Carter were also present.

Q. Now, Mr. Sobelman, you have heard Mr. Corry and Mr. Muldoon testify regarding what transpired at that meeting, have you not?

A. Yes, I have.

Q. Do you corroborate their testimony?

Mr. Freedman: Objection.

The Court: What is the objection?

Mr. Freedman: Sir?

The Court: What is your objection?

Mr. Freedman: That is not the proper way to prove it.

The Court: Sustained.

By Mr. Scanlan:

Q. Mr. Sobelman, will you please tell us, then, in your own words what transpired at that meeting.

A. The meeting started with Mr. Askew reviewing the situation, referred to the fact that it was deplorable that longshoremen were walking off ships over a dispute, and even more, that they were riding up and down the river-front knocking off other ships that were not involved in [fol. 88] the dispute at all, indicated at that time that he felt that the arbitrator's award covered the situation, but that it was a deplorable decision, and that he would hope that some change could be made in that decision.

He was advised by Mr. Muldoon who was acting as the spokesman for the PMTA at the time that that was not possible, and that the setback provision was a condition that resulted from hard negotiation a year ago, it was set out in the settlement agreement last February, had been sustained by the arbitrator's award, was now before—excuse me, had been sustained by a court ruling—and further mentioned that this particular court ruling was in fact, we understood, being appealed by the ILA.

If my memory serves me, it seems that the merit of the setback was discussed at short length and it was pointed out again by the—I believe Mr. Muldoon was speaking—that this provision is necessary for a port like Philadelphia, and I am trying to recall all the conversations that took place, and it is very difficult to remember each and every one.

It seems to me there were some comments from some of the other representatives present, but I can't identify them. My understanding of their comments was that they all recognized that the arbitrator's award applied in this particular matter, and when the meeting adjourned, the comments—

[fol. 89] Mr. Freedman: I move to strike that last statement, Your Honor.

The Court: I didn't get it.

Mr. Freedman: Sir?

The Court: He let his voice drop. I didn't get the gentleman's last statement.

Mr. Freedman: The last part was where he said he couldn't identify who they were, who made this statement.

The Court: It may be stricken.

By Mr. Scanlan:

Q. Mr. Sobelman, would you continue, please.

A. At the conclusion of the meeting—I am not quite sure how to respond now, in view of the objection.

Q. Just tell us what—

The Court: He didn't object.

Mr. Freedman: I withdraw my objection.

The Court: What?

Mr. Freedman: I withdraw my objection, my motion.

The Court: He withdraws his objection.

Go ahead.

A. At the conclusion of the meeting, the members that were representing 1291—and I have enumerated—I sup-

pose ten or eleven, together with those of us representing [fol. 90] the PMTA, stood up, and under these conditions, as I believe everyone who has participated in such a meeting is familiar, there is a lot of exchange back and forth, and the comment was made, as I understood it, that there was nothing further that could be resolved with the PMTA, that the union officials would go down and talk to the men and try to get them to go back to work.

That was my understanding at the conclusion of the meeting.

Q. Now, after this meeting ended, did you participate in the drafting of the telegram which has been identified as P-1 which was sent to the union?

A. Yes, I did.

Q. And does that telegram as far as you are concerned confirm the understanding that was reached at that meeting?

A. Very definitely.

Mr. Scanlan: Cross-examine.

Cross-examination.

By Mr. Freedman:

Q. Was there any statement made at the meeting, Mr. Sobelman, as to the cause of the work stoppage?

A. Yes, it was stated that the work stoppage concerned the setback provisions.

Q. And was there any statement made about who was responsible for it?

[fol. 91] A. I don't—I am not clear how I can properly respond to your question, Mr. Freedman. Could you rephrase it, please?

Q. In other words, you had a discussion about this work stoppage. Didn't the discussion cover who was responsible, who caused it, in the first instance?

A. Well, the understanding I had was that the gangs involved themselves, walked off the ship, or, rather, refused to turn to at 1 o'clock.

Q. As a matter of fact, weren't the officials of the employer association, the Philadelphia Marine Trade Association, complimentary to the union officials for their efforts in attempting to get the men back to work?

A. At that time, Mr. Freedman, I don't think it can be said that there were substantial efforts to have the men return to work. I don't believe—

Q. I asked you about a specific question. I will get to that in a moment. I asked you whether that came up during that meeting?

Mr. Scanlan: I don't believe that was his question.

The Court: What was the question?

Repeat the question, Mr. Reporter.

(The question was read.)

[fol. 92] Q. I asked you about a specific question, Mr. Sobelman. I will get to that in a moment. I asked you whether that came up in that specific meeting.

Mr. Scanlan: I don't think that was the question.

The Court: No, that wasn't the question. Repeat the question, Mr. Reporter.

(The question was read.)

The Court: If you want to withdraw the question—

Mr. Freedman: I am talking about at this meeting, this meeting he was talking about.

The Court: Do you want to withdraw the question?

Mr. Freedman: No, I will let it stand.

The Witness: We were complimentary to the representatives of the union because of their concern about what this work stoppage was doing to the Port of Philadelphia.

Mr. Freedman: Will you read that answer back to me, please?

(The answer was read.)

By Mr. Freedman:

Q. Have you been along the waterfront and seen any occasions when the union officials might have been addressing the men?

A. At what time are you referring to, sir?

Q. At any time from the time it started on Friday until [fol. 93] the present time?

A. I was on the waterfront this morning, yes.

Q. Have you been on the waterfront before this morning?

A. Are you referring to the period since Friday?

Q. Since this started on Friday.

A. No, this morning was my first time on the riverfront since that time.

Q. Where were you since Friday?

Mr. Scanlan: I object to that question, Your Honor.

The Court: Sustained. It doesn't make any difference where he was. Was he at the waterfront, yes or no? He says no. Suppose he is down in Bermuda or up in Nantucket, does it make any difference?

Mr. Freedman: I think it is important where he might have been since Friday, if he was involved in business. If it was pleasure, I have no interest in it. If it was business, I think it is important.

The Court: All right, were you on business or pleasure since Friday?

The Witness: Well, some of both, sir. I will relate my activities since Friday, if—

The Court: No.

[fol. 94] By Mr. Freedman:

Q. All I want to know is where you are.

The Court: You relate them.

Mr. Freedman: Does Your Honor want him to relate his activities? I just want to know where he was.

The Court: You have already said I have been sort of prejudiced against you, so—

Mr. Freedman: I didn't say that, Your Honor.

The Court: Yes, you did. Go ahead, Mr. Witness.

The Witness: During Friday I was in my office.

Mr. Freedman: Your Honor, I take exception to Your Honor's remarks.

The Court: You may take exception. You said you are not successful in getting some of your rulings across and therefore so and so and so and so.

Mr. Freedman: Your Honor said I was—

The Court: Answer the question, please. I have said all I intend to say, Mr. Freedman. You are a very nice fellow, very active for your clients, and doing a good job. I don't agree with everything you have said legally. Otherwise we are all right. Socially we are good friends. Go ahead.

The Witness: Friday I was in my office which is located in the Bourse Building. Saturday I intended to remain [fol. 95] at my home. However, I received word that one of the ships for which we were acting as agents had been knocked off and I decided to proceed to the Bourse Building.

Upon arriving there, I went to the office of the Philadelphia Marine Trade Association. This was about 11:00 a.m. I then participated in the meeting that was referred to. On Sunday I was at home. On Monday I was in my office. Does that answer your question, sir?

By Mr. Freedman:

Q. So actually the only contact you had with what was going on on the waterfront was this morning?

A. The only time that I, personally, was down on the riverfront during this period was this morning, yes.

Q. Now, did you hear anyone addressing, any union official addressing any of the men down there this morning when you were there?

A. No.

Q. Where were you?

A. At the gate of Pier 98.

Q. Did you see any union officials around?

A. Yes.

Q. Who did you see?

A. I saw Mr. Askew.

Q. Did you talk to him?

[fol. 96] A. No.

Q. Was he talking to any of the men?

A. Yes.

Q. Did you hear what he was saying?

O. No.

Q. How far away were you?

A. Perhaps ten feet.

Q. And you couldn't hear what he was saying?

A. No.

Q. Who else did you see down there?

The Court: How many members was he talking to?

The Witness: To the best of my recollection, at that time it was three or four men gathered around him.

By Mr. Freedman:

Q. Were there other huddles of men around in addition to these three or four men who were immediately in his presence?

A. There were other men down at the gate, yes.

Q. Well, who could have heard what he was talking about?

A. In my judgment, no.

Q. Did he go from place to place while you were there?

A. Mr. Freedman, I didn't remain in one place and specifically watch everything that Mr. Askew did, so I can't answer that.

Q. Who else did you see down there this morning?

A. I saw Mr. Kane.

[fol. 97] Q. Which Mr. Kane?

A. Mr. Joseph Kane.

Q. The secretary-treasurer?

A. Sir?

Q. The secretary-treasurer?

A. Mr. Joseph Kane.

Q. Did you talk to him?

A. I may have said good morning; nothing beyond that.

Q. Did you talk to him about the work stoppage?

A. No, sir, he handed me a copy of the pamphlet that was being handed out down there.

Q. That is R-1, the one that has been marked R-1?

A. I am not familiar with the identification.

Q. Is this it right here? Let the record show that I handed the witness R-1.

A. Yes, sir.

Q. He handed that to you. Was he handing this pamphlet out to others?

A. Yes, sir.

Q. Did you observe him talking to any of the longshoremen down there?

A. I did not specifically observe him speaking with people.

Q. He just handed them the pamphlets?

A. During the moments that I was watching him, yes. [fol. 98] Q. Anybody else that you saw down there, any other union official?

A. I saw Mr. Moock down there and Mr. Carter.

Q. Let's take them one by one. Did you speak to Mr. Moock?

A. If I may generalize, I had no extended conversation with any of the union officials that I saw there. I may have said good morning, and if you will accept that, I will leave it.

Q. You didn't talk about the work stoppage at all with them?

A. No, sir, I did not.

Q. Did you observe Mr. Moock talking to any of the men?

A. It seems to me that I did, yes.

Q. And did you hear what he said?

A. No, sir.

Q. How far away were you from him?

A. Perhaps about the same distance as I previously indicated, ten to fifteen feet.

Q. And you couldn't hear what he was saying?

A. No, sir.

Q. How many men were in the group at the time you saw him talking to some men?

A. To the best of my recollection 3, 4, 5, 6, something like that.

Q. Did you observe him while you were there? By the way, how long were you down there?

[fol. 99] A. I was there from 7:45 until 8:40.

Q. Approximately an hour?

A. Approximately an hour.

Q. And during this period of time did you observe him moving from place to place in that area, talking to different men?

A. Mr. Freedman, again I can only say to you I did not make a detailed mental record of the specific activities of each man and I must qualify that I left the gate at Pier 98 for about twenty minutes from about 8:15 to 8:35, something like that, to visit on board a ship for which we were the agents there and explained to the captain that there would be no further work that day, today that is.

Q. Now, I think that Mr. Moock, for the record, has been identified as the International vice president. Now, I think you said you also saw Mr. Carter there.

A. Yes, I did.

Q. He is the International vice president for the Atlantic Coast District, is he not?

A. Sir, I am not in a position to verify his title.

Q. For the record, I will make that identification. Then I will ask you whether you observed Mr. Carter talking to any of the men.

A. It seems to me that I did observe him talking to one or two men on the one occasion that I happened to see him.

[fol. 100] Q. And are you able to state whether or not he moved from place to place in that area talking to different men?

A. I am unable to answer that.

Q. Could you hear what he said?

A. No, sir.

Q. How far away were you from him?

A. Perhaps ten feet.

Q. Ten feet. Was this all at the same-time, you were ten feet away from all of these different union officials, and you couldn't hear any of them?

A. Approximately.

Q. Who else did you see, what other union officials did you see down there?

A. It seems to me that I saw Mr. Johnson there.

Q. And how far away were you from him?

A. Well, at the risk of being repetitive, I will say again about fifteen feet.

Q. All right, did you hear what he said?

A. No, sir.

Q. So how many people was he talking about?

A. To the best of my memory, three or four.

Q. And did you see him wandering around talking to different groups of people?

A. I can't say that I remember the specific movements of [fol. 101] these individuals.

Q. Who else did you see down there, that is the union officials?

A. I believe I have identified all of those that I saw.

Q. Didn't you attempt to find out what these union officials were saying to the men?

A. No, sir.

Q. You didn't attempt to hear?

A. No, sir.

Q. Did you discuss the matter with any of the men down there?

A. I spoke to several of the men, yes.

Q. Who?

A. Anonymous longshoremen as far as I am concerned.

Q. They were who?

A. Anonymous longshoremen.

Q. Anonymous longshoremen?

A. Men there, presumably longshoremen to go to work on the ships and decided not to.

Q. Had you ever seen them before?

A. Sir?

Q. Had you ever seen them before?

A. Not to my knowledge.

Q. Sir?

A. Not to my knowledge.

[fol. 102] Q. How long have you been on this waterfront?

A. Since 1945.

Q. And you have never seen them before, these people?

A. I may have seen them but I cannot identify them as having seen them before.

Mr. Freedman: That is all.

The Court: Mr. Scanlan.

Mr. Scanlan: No redirect examination, sir.

The Court: Any other witnesses?

Mr. Scanlan: No, sir, that completes our case, Your Honor.

Mr. Freedman: If the Court please, I move for a dismissal. There isn't a word of evidence to indicate that a single union official or the union started or encouraged this work stoppage. I move for a dismissal of this—whatever the proceeding may be.

The Court: Refused.

Mr. Freedman: Well, in order that I may direct myself at specific channels in which Your Honor might be interested, may I ask Your Honor what, particularly, you may consider to be evidence against the union in this case?

The Court: It is your case, sir. You may proceed, if you choose to, or not proceed.

Mr. Freedman: Mr. John Smith, will you take the stand, [fol. 103] please. I put this evidence on with the same understanding before, Your Honor, that I do not waive any of the defenses, nor do we waive the jury trial.

JOHN J. SMITH, sworn.

Direct examination.

By Mr. Freedman:

Q. Mr. Smith, will you state what your position is in the union, please?

A. Business agent for Local 1291.

Q. International Longshoremen's Association?

A. Yes.

Q. For how long have you been on this waterfront?

A. Since 1941.

Q. And for how long have you been a business agent?

A. Since 1955.

Q. Mr. Smith, were you present on Friday morning along the waterfront?

A. Yes, I was.

Q. Will you tell us what you know about the onset of this particular problem that is now before the Court.

A. I first came in contact with this situation Friday morning at the dispatching center.

Q. Where is that dispatching center?

[fol. 104] A. The dispatching center is under the Walt Whitman Bridge in South Philadelphia. I reported to work approximately around seven o'clock or a little after seven, I would say, and proceeded to start to dispatch the men who were going to various jobs in the Port. Everything was going along smoothly until sometime before eight o'clock when a group of men that I knew were associated with Murphy Cook came into the dispatching center and told me of the situation, of what happened to them.

I asked them what happened. They told me that Wednesday, the 23rd, they were hired for Thursday, for one o'clock on a ship at Pier 96. They reported to work Thursday at one o'clock, and due to the inclement weather, they did not turn to but they were paid four hours.

They then were instructed by the employer to report back to the job the next morning, shipside orders. The

next day, Friday, the 25th, the men reported to Pier 96. They were then told at that time that they were pushed back to one o'clock.

Q. What time was that?

A. That was sometime before eight o'clock.

Q. Well, can you give us something more specific? Can you give us a little more specific time?

A. I would say sometime before eight, ten of eight, five of eight, roughly around that time, quarter of eight.

[fol. 105] Q. All right.

A. I told them that we had a situation in the Court now, as far as an appeal was concerned, but I thought, my opinion, that this situation was altogether different, due to this reason: This was a situation where the men were on the ship the day before and they had shipside orders to report back, and I said I was going to contact the man to try to get the men to go to work and institute some kind of a grievance, because in my opinion—and I have been a business agent for ten years or better—every situation on the waterfront pertaining to a ship is altogether different every time. It is not like working in a factory or any place else.

We work steady. The ship, itself, constitutes new problems every day. I knew about the situation in the Court of Appeals, but I knew that pertained to another situation, as far as I was concerned, and I told the men that I thought they had a good beef, but I told them to leave us work it out and leave it in our hands but go back to work and leave us handle it.

All they did was proceed to grumble and walk out the door. The next thing I knew, after one o'clock, the situation arose where the men didn't turn to.

Q. What happened after that that you know of?

A. Well, just the situation actually erupted after that.
[fol. 106] Q. Let me be more specific. Mr. Smith, have you from time to time addressed various groups of men and urged them to go back to work?

A. Ever since we have been on this situation I have.

Q. And how frequently has that been?

A. That has been Saturday, Sunday, Monday, and Tuesday.

Q. That includes this morning?

A. This morning, too.

Q. What about Friday?

A. Well, Friday I was not there Friday afternoon. Friday afternoon I was not there.

Q. Have you seen any of the other union officials addressing the various men at different places?

A. Yes, sir.

Q. Were you able to hear what they were saying?

A. Yes, sir, I heard Mr. Askew speak and tell the men to go back to work and leave us settle this out for you, the right way, through the contract. That was said by Mr. Talmadge, Mr. Devine, myself, Mr. Johnson, Mr. Kane. I heard them all say this, because I was walking all around myself.

[fol. 107] By Mr. Freedman:

Q. Will you finish with your answer, Mr. Smith?

A. Could I have that read?

(The question and answer were read.)

By Mr. Freedman:

Q. Did the union officials themselves have any understanding that they would do these things, urge the men to go back to work?

Mr. Scanlan: Objection.

[fol. 108] The Court: Sustained.

By Mr. Freedman:

Q. Did the union officials have any understanding with respect to this work stoppage, about going back to work?

Mr. Scanlan: Objection.

The Court: Sustained.

Mr. Freedman: May I ask on what grounds?

The Court: Only what he knows.

Mr. Freedman: That is what I am asking.

The Court: No, you didn't ask that.

By Mr. Freedman:

Q. Mr. Smith, did you attend any sessions or meetings with other officials of the union?

A. Yes, I did; as far as getting the men back to work?

Q. Yes.

A. Yes.

Q. And since when?

A. Ever since the inception of the situation.

Q. And did you have various meetings every day?

A. Every day.

Q. And what was the nature of the discussion?

A. To get the men back to work and let it go through the proper channels to be settled. We kept on laboring that to the men, telling them to do that.

[fol. 109] Q. By proper channels, what did you mean?

A. For a grievance procedure that we have in the contract.

Q. Under the contract?

A. Yes.

Q. By the way, after the men came to you in the first instance, I think you said on Friday, is that correct?

A. Yes.

Q. You then went to Mr. Smith of the Murphy Cook Company?

A. Oh, yes. I forgot to mention that. To try to rectify the matter I thought anyhow, I went to the next building which is where the employers are housed there, and I met Mr. Vincent Smith, who is the superintendent for Murphy Cook Company, and I asked Vince if he could do anything about getting the men to go to work at eight o'clock in the morning, because that day there was approximately 70 gangs that were working, and I know of 12 gangs that were pushed back to one o'clock, including Murphy's gang.

The reason I went in there, because the weather was actually breaking. It was starting to be a beautiful day, and due to the fact that at Pier 98 there were other ships that were working for other companies. That is what I tried to do. I went over and talked to him. He called somebody on the phone whom I don't know.

Q. What did you say to him and what did he say to you? [fol. 110] A. I asked Vince if he could get somebody to reconsider the order so these men would go to work this morning. He said he would see what he could do. He then proceeded to make a phone call.

Q. Do you know who he talked to?

A. I don't know. It might have been Mr. Monroe. I am not sure.

Mr. Scanlan: I object, sir.

The Court: Sustained.

Mr. Scanlan: I object, sir, and ask that it be stricken.

The Court: It may be stricken.

By Mr. Freedman:

Q. Did he express any opinion with respect to the merits of the work stoppage?

A. No, he didn't say anything. Vincent didn't say anything, only that he would like to get the ship working himself, that he would like to be working.

Q. And did he make an effort to get the men back with his own people?

Mr. Scanlan: Objection.

The Court: Better rephrase that question.

Mr. Freedman: All right, I will withdraw it.

[fol. 111] By Mr. Freedman:

Q. After he talked to whoever it was, what did he say to you?

A. He said to whoever he was talking to, "No, the men are still pushed back to one o'clock, and that is it."

Mr. Freedman: That is all.

The Court: Mr. Scanlan, cross.

Mr. Scanlan: Yes, sir.

Cross examination.

By Mr. Scanlan:

Q. Now, Mr. Smith, I think you testified that the men who came in to see you on Friday morning and claimed that they were set back until one o'clock, that you told them that they had a good beef, is that correct?

A. In my opinion I thought the beef was different than the first beef.

Q. But you did tell these men, did you not, that they had a good beef?

A. Yes, I did.

Q. Now, Mr. Smith, you are familiar with the contract between the PMTA and the ILA, 1291, are you not?

A. Yes, sir.

Q. And you are familiar with Section 10 (6) of the contract, are you not?

A. Yes, sir, when I see it, yes. Offhand it is a really [fol. 112] complicated affair, I will tell you that. You have to read it for awhile.

Q. Well, you have expressed your opinion now as an expert here. Are you familiar with Section 10 (6) of the contract or not?

Mr. Freedman: If the Court please, I object to that. That is utterly uncalled for.

The Court: Object to what?

Mr. Freedman: That he expressed an opinion as an expert.

The Court: Oh, I won't consider that. He just expressed an opinion.

Mr. Freedman: What he is doing now, Your Honor, is to open the door—

The Court: I won't consider that.

Mr. Freedman: —is to open the door to the whole merits of this arbitration. As far as I am concerned, I am willing to do it, but he is opening the door now, and I am saying to Your Honor I am going to open it wider.

The Court: No, I won't consider that. It is stricken from the record. He is not an expert. He said he was a business agent for his union. That is all.

By Mr. Scanlan:

Q. Are you familiar with Section 10 (6) of the contract? [fol. 113] A. Yes. I believe it pertains to—

Mr. Freedman: This is what he is doing. He is opening the door.

The Court: I understand what he is doing.

The Witness: It pertains to the pushback.

By Mr. Scanlan:

Q. That is the section that provides for the setback?

A. Yes.

Q. Isn't it true that section provides that gangs ordered for an eight a.m. start, Monday through Friday, can be set back at 7:30 a.m. on the day of work, to commence at one p.m., at which time a four-hour guarantee shall apply, a one-hour guarantee shall apply for the morning period, unless employed during the morning period?

The Court: Don't answer the question. Mr. Freedman has an objection.

Mr. Freedman: The contract speaks for itself. He is reading from the contract.

The Court: He asked if he is familiar with this section.

Mr. Freedman: No, he is asking if this is what the contract says. That is what he is asking. The contract speaks for itself. If he is asking an interpretation, I object to it, [fol. 114] The Court: If he is asking what?

Mr. Freedman: If he is asking for an interpretation.

The Court: No, he isn't asking for any interpretation. If he is, I will overrule him. He can't do that.

Mr. Freedman: That is what he has just done, Your Honor.

The Court: No, no, no.

Mr. Freedman: If he is asking just what the contract says, let him put it in evidence. I will agree to that.

The Court: The contract is in evidence.

Mr. Freedman: Then the contract speaks for itself.

The Court: It does, but he wants to know whether he knows about this section. The answer is yes or no.

By Mr. Scanlan:

Q. Do you know about that section, Mr. Smith?

A. Yes.

Q. There is no provision in that section that has any qualifications for shipside orders; isn't that correct?

Mr. Freedman: That is objected to, Your Honor.

The Court: Sustained.

[fol. 115] By Mr. Scanlan:

Q. Are you familiar with the arbitrator's award that was handed down in this case?

A. In this case?

Q. Yes.

A. No. The other case I am familiar with. This situation, no. In the other situation, yes.

Q. Are you familiar with the arbitrator's award of Mr. Weiss that was entered on June 11, 1965?

A. Yes, sir.

Q. Did Mr. Weiss rule at that time that the employer's right to set back the gangs was without qualification?

Mr. Freedman: Again Your Honor, whatever Mr. Weiss ruled is on paper. It is in evidence. It speaks for itself.

The Court: Sustained.

The only thing I am interested in is does he know about it, and he said yes.

By Mr. Scanlan:

Q. Do you know about that section—

The Court: He knows about the arbitrator's award.

By Mr. Scanlan:

Q. Do you know about that section of the arbitrator's award?

[fol. 116] Mr. Freedman: He has already said he knows about the arbitrator's award. I think that covers it.

The Court: That covers it.

By Mr. Scanlan:

Q. Well, Mr. Smith, since you know about that section of the arbitrator's award, you nevertheless told these men that they had a good beef; is that correct?

Mr. Freedman: Objection.

Mr. Scanlan: This is cross examination, Your Honor.

The Court: If you will leave out those few words, "knowing about the arbitrator's award," then I will allow it.

Mr. Scanlan: I will modify the question.

The Court: Then I will allow it.

By Mr. Scanlan:

Q. Will you answer the question?

A. Repeat the question, please.

The Court: Repeat the question, please.

By Mr. Scanlan:

Q. You told the men who came to see you on Friday that they had a good beef; is that correct?

Mr. Freedman: He has already said that three times, Your Honor. He testified to it on direct examination.

[fol. 117] I want to make this statement: I object, Your Honor, to Mr. Scanlan taking the one statement out of context. He said in addition to that there is a proper way to settle it. It is a good beef. There is a proper way to settle it. I object to Mr. Scanlan's taking one sentence out of context.

The Court: All right, I think the Court understands that. Don't repeat that. Just ask the question you have in mind.

By Mr. Scanlan:

Q. Have you answered the question, Mr. Smith?

The Court: No, he hasn't. He was interrupted.

The Witness: Would you repeat the question again, please?

The Court: You don't have any question. So you can't answer anything.

Go ahead.

By Mr. Scanlan:

Q. Mr. Smith, you said that you also urged the men to go back to work, is that correct?

A. Yes, sir.

Q. Now, where were you on Friday afternoon at one o'clock?

A. I was not there. I had a problem, a domestic problem.

Q. One o'clock was the time that these men were supposed to report who were set back; isn't that correct?

[fol. 118] A. Yes, sir.

Q. And these were the men that you told they had a good beef; is that right?

Mr. Freedman: I object to that, Your Honor.

The Court: That is right; sustained. At one p.m. he was not there with the men. That is all we need to know.

By Mr. Scanlán:

Q. You were not at the job site then at one o'clock on Friday afternoon when these men who were set back were supposed to report to work?

A. That is right. I also know there were other representatives that were there.

Q. I am not asking you that, Mr. Smith. Just answer my question.

Mr. Freedman: You did ask him that. He gave a direct answer, Your Honor.

By Mr. Scanlan:

Q. Now, Mr. Smith, where were you on Saturday morning?

A. I was there.

Q. Where were you?

A. I was at the hiring center and at Pier 98.

Q. What time were you at the hiring center?

A. I got there a little after eight o'clock, 8:30, I would [fol. 119] imagine it was, or quarter of nine.

Q. Is that the regular time that you appear at the hiring center?

A. No, sir.

Q. What is your regular time for appearing at the hiring center?

A. Approximately seven o'clock.

Q. Was there any reason why you weren't there on Saturday morning at seven o'clock?

A. Yes, sir.

Q. What was the reason?

A. I was out celebrating the night before.

Q. Now, did you stay at the hiring center on Saturday?

A. No, we got together with the other officials, and I think that is when we went up and had the meeting at twelve o'clock with you people. Well, you weren't there.

Q. Did you go directly from the hiring center to Mr. Corry's office?

A. No, I think we stopped and got some coffee.

Q. But you didn't visit any of the piers; is that correct?

A. Yes, I did. I rode down from Delaware Avenue. I saw men knocking off at Pier 38 and all along the piers.

Q. You saw that on Saturday, as you came up to Mr. Corry's office?

[fol. 120] A. Yes, as I was riding down, yes.

Q. Now, where were you on Sunday morning, Mr. Smith?

A. I was at the hiring center and at the pier.

Q. What time did you arrive at the hiring center?

A. Five after seven.

Q. And how long did you stay there?

A. I stood there till approximately, I would say, ten of nine, nine o'clock.

Q. How many men were at the hiring center?

A. There was a pretty good number of men.

Q. What is your best estimate?

A. I would say there was approximately three hundred to 350 men there; three hundred men I would say at the hiring center.

Q. This is on Sunday morning?

A. Yes.

Q. Now, did you speak to the men on Sunday?

A. Yes, I did.

Q. What did you say to them?

A. I told the men to go to work.

[fol. 121] Q. What did the men say to you?

A. They didn't say nothing. They just—milling around, just kept among one another.

Q. Did you visit any of the piers on Sunday?

A. Just a ride up and down the piers, that's all.

Q. And who was with you at the hiring center on Sunday?

A. All the officials, as far as I can recollect.

Q. All of the officials of 1291?

A. Yes.

Q. Now, were you at the hiring center on Monday?

A. Yes, sir.

Q. What time did you appear there?

A. A little bit after 7 o'clock.

Q. And how long did you stay there?

A. Stood there till about, well, prior—right before 8 o'clock.

Q. How many men were at the hiring center at that time?

A. Well, there was plenty of men outside there then, plenty.

Q. Could you give us your best estimate?

A. Six hundred, seven hundred men, six hundred men, anyhow, a lot of men out there.

Q. Did you speak to any of those men?

A. Yes, sir.

Q. How did you speak to them?

[fol. 122] A. Went outside and talked to them.

Q. How many men did you talk to?

The Court: Just a moment, now, Mr. Scanlan.

A. Well, groups.

The Court: Now, Mr. Scanlan; will you move over?

By Mr. Scanlan:

Q. Mr. Smith, as I understand it, before I stopped the last question, you were testifying about Monday.

A. Yes, sir.

Q. At the hiring center?

A. Yes, sir.

[fol. 123] By Mr. Scanlan:

Q. I believe you testified, Mr. Smith, you were at the hiring center on Monday?

A. Yes, sir.

Q. There were approximately how many men present?

A. Six hundred men.

Q. Six hundred men?

A. Plenty of men. There was plenty of them.

Q. And you went outside the hiring center and you talked to groups of men?

A. Small groups.

Q. Now, how many men were in these groups?

A. Sometimes it was ten, sometimes it was six, and so on.

Q. Now, isn't it true that there is a microphone and a public address system at the hiring center?

A. Yes, sir.

Q. Did you use the microphone on Monday to talk to the men that were outside?

A. No, I did not.

The Court: Ray, you will have to go out there and quiet the people down and get them out of the hallway. It is impossible for me to hear. It will be impossible for counsel to hear.

All right, Mr. Scanlan.

[fol. 124] By Mr. Scanlan:

Q. Now, how long did you stay at the hiring center on Monday?

A. I think it was right before 8 o'clock, I left Monday.

Q. And when you talked to these groups of men outside the hiring center, did you urge them to return to work?

A. They were only asking me what the situation was, and I was telling them, I told them to all go to work. In fact, we were dispatching men out there to go to work.

Q. And did you tell the men at the hiring center to go to work?

A. Yes, I did. I didn't have to tell some of them because they were going to work regardless.

Q. I am just asking you whether you told the men in these groups outside the hiring center to return to work.

A. Yes, I did.

Q. Now, did you go to Pier 98 on Monday where the Murphy-Cook gang was and tell them to go to work?

A. Monday morning?

Q. Yes, sir.

A. No, sir.

Q. You didn't tell the Murphy-Cook gangs to go to work?

A. No, sir.

Q. They were at Pier 98, isn't that right?

[fol. 125] A. Yes, sir.

Q. How far away is Pier 98 from the hiring center?

A. I would say half a mile.

Q. You had a car at the hiring center, did you not?

A. Yes, sir.

Q. And you could have gone to Pier 98 and talked to the Murphy-Cook men, too, if you wanted to; isn't that right?

A. Yes, sir.

Q. But you didn't do that, did you?

A. No, sir.

Q. Now, were you at the hiring center this morning?

A. Yes, sir.

Q. What time did you get there?

A. A little bit after 7 o'clock.

Q. How many men were at the hiring center at that time?

A. A couple hundred.

Q. Did you talk to any of these men?

A. It was about 6—the hiring center, you said?

Q. At the hiring center.

A. Yes, we still was talking to the men about going to work.

Q. Mr. Smith, I am talking about you personally, now. Did you talk to these men at the hiring center?

A. I talked to small groups of men, yes.

Q. Where did you talk to them?

[fol. 126] A. At the hiring center.

Q. On the outside?

A. At the outside and on the inside.

Q. Did you use the microphone to communicate with the men who were on the outside?

A. No, I did not.

Q. What did you tell the men whom you talked to on the outside?

A. To go to work and leave us settle this through the contract.

Q. And you mentioned you talked to the men on the inside, that is, in the building?

A. A couple, a couple men there on the inside.

Q. What did you tell those men?

A. The same thing

Q. To go to work?

A. Yes, sir.

Q. Now, you didn't go to Pier 98, though, did you?

A. Today?

Q. Yes.

A. Yes, sir.

Q. Did you talk to the gangs that were working for Murphy-Cook?

A. We were talking to them. Yes, I did. I talked to a few [fol. 127] men who worked for Murphy-Cook.

Q. Well, where did you go when you went to Pier 98?

A. Right at Pier 98, at the gate of Pier 98 with the ship, the only ship that is left there is involved right now.

The others—

Q. Is that the ship that the Murphy-Cook gangs were working on or supposed to work on?

A. Yes, yes, sir.

Q. How many men were there?

A. There was a couple hundred men in that vicinity, I imagine. I don't know if they all belonged to Murphy-Cook.

Q. Did you talk to those men?

A. I tried to talk to as many men as I possibly could, yes.

Q. How many men did you talk to?

A. I would say twenty or thirty men, thirty-five men.

Q. Out of how many?

A. A couple hundred men was there.

Q. And did you tell those men to go to work?

A. Yes, sir.

Mr. Scanlan: That's all.

The Court: Mr. Freedman, any redirect?

If not, the next witness.

Mr. Freedman: I think that's all, sir.

I would like to recall Mr. Muldoon.

[fol. 128] The Witness: Thank you.

Mr. Freedman: For further cross-examination, sir.

The Court: Mr. Muldoon, please.

FRANCIS MULDOON, resumed.

Cross examination (continued).

By Mr. Freedman:

Q. Mr. Muldoon, in discussing this matter during the past several days with one of the union officials, did you make the statement that Murphy-Cook made a mistake in calling this setback?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You are sure?

A. Yes, sir.

Q. That's all.

You realize you are still under oath, Mr. Muldoon? I say, you realize you are still under oath now?

- A. Yes.

Mr. Scanlan: I object to that.

The Court: No, that's all right. "You realize you are [fol. 129] still under oath," is what he asked you.

The Witness: Oh, yes, yes.

Mr. Freedman: All right. That's all.

Mr. Askew.

RICHARD L. ASKEW, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Freedman:

Q. Mr. Askew, when did this matter first come to your attention?

First, let me ask you, you are president of Local 1291?

A. Yes.

Q. For how long have you been on this waterfront, Mr. Askew?

A. About twenty-four years.

Q. And for how long have you been an officer?

A. Sixteen years.

Q. And how long as president of the union?

A. Twelve years.

Q. Now, Mr. Askew, when did this matter first come to your attention?

A. Friday, last Friday.

[fol. 130] Q. Will you tell us from the time it first came to your attention what happened, what you did so far as this episode is concerned, to whom you spoke and what was said?

A. Well, Friday between 12 and 1 o'clock, as I was driving down Delaware Avenue from the dispatching center under the Walt Whitman Bridge, en route to my office on Walnut Street—Chestnut Street—as I passed Pier 98, a group of men was standing near the main gate, and some of the men recognized my car and yelled to me. I pulled into the gate, into the pier.

Q. That is Pier 98?

A. Pier 98, and parked my car and went back to talk with the men, and they told me of their grievance regarding this pushback, and they told me that they intended to not work.

I informed them that if they had a grievance, that they should not knock off; they should submit the grievance to

the union officials and we would process it through the proper channels.

I talked with those men I would say about thirty minutes or so, and then men came to me from another ship with another problem, and because I had prior commitments that I had to take care of, I went back to the dispatching center under the Walt Whitman Bridge and got Paul Johnson and took Paul Johnson back to Pier 98 to look into these problems because I had to leave.

[fol. 131] I learned during the afternoon on Friday that these men did not turn to, did not go to work on three ships, one for Universal, one for Murphy-Cook, and one up the line, I believe, for Jafka Corporation.

I then contacted all of my officers and we got together and made plans to meet Saturday in an effort to try to get these men to work and also in an effort to try to prevent the problem from spreading because from the nature of the conversations or the nature of the talk that was done with me, I had the feeling that if the problem did erupt, it might spread.

On Saturday morning, all of the officials were at Pier 98, all of the officers of my local, including Mr. James T. Moock, the International vice-president, and Mr. Clifford Carter, the United States district vice-president, and we urged the men to the best of our ability to go to work and let us process any grievance that they had through channels, pursuant to the contract.

I wasn't successful. As a matter of fact, none of us were, and finally Mr. Muldoon came near the group that I was talking with on the outside and he spoke with me and I told him that it was a large group of men in the cafeteria and that I was going to go in and address them, and he and I walked right into the door together.

[fol. 132] And he said, "Dick, maybe we could get together and try to do something about this situation."

And I said to Mr. Muldoon, "All of our people are around. Can you get your people on a Saturday?"

He said, "Well, you are going to be around for a while, and you are going to address the men. In the meantime, I will make a few telephone calls and I will let you know if I can get some of our people and have a meeting in the Bourse Building."

Finally he came back and he told me that he would meet at noontime.

We met in the Bourse Building and we talked about the problem. We talked at length about the manner in which—the circumstances under which this setback was made, and in the light of the fact that there were other ships at Pier 98 that worked on Friday at the same time, and these men were being set back was one problem I think that we were all quite concerned about.

And Mr. Muldoon did say to us that the setback was an error of judgment and he didn't say it just one time; he said it more than once. He said it down at Pier 98, and he said it to me.

Saturday we held another meeting among ourselves after we left the Bourse Building and we decided to make up [fol. 133] circulars to distribute to the men on Sunday, and I called Novelty Printing Company at 4 o'clock and asked them to hold people by so we could have pamphlets printed and we would pay them overtime, if they would stay and print the pamphlets so we would be able to put them out on Sunday.

And after talking with your office with respect to making a check on language and so forth, your office informed me that they would make these circulars up for us, and you people printed the circulars for us.

We distributed those circulars on Sunday.

Sunday night at 9:30, I called Paul Johnson and I called Talmadge. John Smith and Mooch weren't at home.

Q. Before you go further, Mr. Askew, the circular to which you referred, is this the one that has been marked R-2 for identification that was distributed on the 26th?

A. Yes.

Mr. Freedman: I offer it in evidence, Your Honor.
The Court: You do what?

Mr. Freedman: It need not be read again. It has already been read.

The Court: What do you do, sir, again?

Mr. Freedman: I say I offer it in evidence.

The Court: Admitted. R-2?

[fol. 134] Mr. Freedman: Yes, Your Honor.

(Exhibit R-2, formerly marked for identification, was received in evidence.)

By Mr. Freedman:

Q. Please go on, Mr. Askew.

Would you like to have the reporter read back the last thing you said?

The Court: You were talking about calling somebody on the telephone.

The Witness: Saturday night.

The Court: Sunday night.

The Witness: Saturday night.

The Court: No, Sunday night.

The Witness: Sunday night.

The Court: If you want to say something about Saturday night, but Sunday night—

The Witness: No, Sunday night, you are right, I called Paul Johnson and Talmadge and asked them would they help me to print another circular to distribute on Monday, and they assured me that they would.

I called Mr. Joseph Weiner, Esq., a member of your firm, Mr. Freedman, and asked him if he could have two girls at his office at 10 o'clock on Sunday night and we would make up enough circulars for distribution on Sunday, and [fol. 135] that we did.

By Mr. Freedman:

Q. Is that the circular that has been marked here R-1 for identification, Mr. Askew?

A. I think you have the circulars dated—this one was today.

Q. Yes, that's the 28th.

A. Yes, and this one.

Q. —was the 26th?

A. Was Monday, yes.

The Court: So R-1 has been offered?

Mr. Freedman: R-1 is the later one, although it was printed first.

The Court: Yes, so the witness understands.

Mr. Freedman: Yes. See, R-1 came later, was the later one.

The Witness: Right.

Mr. Freedman: I offer R-1 also in evidence, Your Honor.

The Court: Admitted.

(Exhibit R-1, formerly marked for identification, was received in evidence.)

By Mr. Freedman:

Q. Please go ahead, Mr. Askew.

[fol. 136] A. We did meet at your office, Mr. Freedman, on Sunday night and make—print a circular to be distributed on Monday, and Monday after we met the other representatives of the union, Mr. Cane and Mr. Devine and Mr. Smith and so forth, we decided that the circular that we made up on Sunday night should be revised, should be altered, and then we made some changes with that circular and we had that circular printed and distributed instead of the one that we made Sunday night.

Q. The final product is the one that is now in evidence; is that right, Mr. Askew?

A. Yes.

Q. Please go ahead.

The Court: That is R-1, now.

Mr. Freedman: Yes.

A. That's about all I have to say, Mr. Freedman.

By Mr. Freedman:

Q. Now, Mr. Askew, when the collective bargaining agreement was first consummated, originally consummated, do you recall when that was about?

A. It was in February, 1965.

Q. Now, before it was signed, was it submitted and read to the membership at a membership meeting?

A. Yes, before that agreement was signed, I personally read the proposed agreement from beginning to end, in [fol. 137] addition to which I allowed the members to ask questions. I made clarifications of certain provisions in the new proposed agreement at that time, and before the membership voted on the agreement or when they were voting on the agreement, we had a half dozen copies of the agreement posted around the area where the voting took place.

Q. Would you say that the members of the union were well acquainted with the provisions of this contract?

Mr. Scanlan: Objection, sir.

The Court: Sustained.

By Mr. Freedman:

Q. When you read the contract to the members, did you read it verbatim, including this particular clause that is in question?

A. I read every single word in the agreement, and while I was reading the agreement, every single officer of the local union sat behind me to make sure that I did not miss one single word.

Q. Mr. Askew, have you from time to time addressed the membership since this episode arose on Friday and discussed the matter with them?

A. I have addressed the membership every single day since this dispute has been in progress and I have addressed the membership in groups larger than five or six. At Pier 98 where the crux of the dispute is at I have addressed [fol. 138] dressed the entire group there several times, and several times during the day the entire group, because I

would stand out among the group and talk out loud, and they all can hear me. I have a pretty husky voice, and I urged them to return to work and allow the ships to work, and let us handle this through proper channels because that's the way it should be done in my judgment.

Q. What did you mean by "proper channels"?

A. Well, through the grievance machinery, as we always do.

Q. Under the contract?

A. Under the contract, yes, sir.

Q. When you said that you addressed the men several times during the day, was that in any one day or every day?

A. Every single day.

Q. How many times would you say that you addressed the men?

A. I must have addressed the men at least twelve, fifteen times since this thing has been into effect, maybe more. That's why my voice is a little bit husky now.

Q. And when you talked to the men how many men did you talk to at a time?

A. I addressed the whole group down at Pier 98, and that's where the crux of the dispute was. The ships that are in dispute now are at Pier 98. I believe the one that Jarka had has left the port, I think. I don't think that is a problem. I think the other ships that are in dispute are [fol. 139] at Pier 98, to the best of my recollection.

Q. Mr. Askew, I show you two telegrams. I show you Plaintiff's Exhibit No. 3, a telegram, and ask you to examine it.

A. Yes, I recognize it.

Q. Now, I ask you to examine Plaintiff's Exhibit No. 1 first.

A. I received this telegram.

Q. Now, was Plaintiff's Exhibit 3 a telegram sent by you and the other agents, the other officials?

A. Yes.

Q. Did that correctly represent your understanding of what happened at the meeting on, what was it, Saturday?

A. Yes.

Q. I show you a telegram marked P-2. Is that the telegram invoking the grievance procedure?

A. Yes.

Q. You asked for a meeting with the Philadelphia Marine Trade Association?

A. Yes.

Q. Under, I think in this telegram you say, under Paragraph 28 of the collective bargaining agreement?

A. Yes.

Q. Did you get any reply to it?

A. No.

Q. Have they indicated any intention to go to grievance [fol. 140] in this matter?

A. Nothing since Saturday. They met with us Saturday and discussed the case.

Q. That was before you sent them this telegram?

A. Yes.

[fol. 141] Q. Since you sent this telegram, have they communicated with you regarding this matter in any way, shape, or form?

A. No.

Q. Are you prepared to sit down and discuss it and carry through with this grievance procedure?

A. Yes, I think we ought to sit down and do something about it, if we can. Maybe we can do something about it.

Q. Is this what you had in mind when you told the men that the matter should be processed through the proper channels by going through—by resorting to paragraph 28 of the collective bargaining agreement?

Mr. Scanlan: Objection, sir.

The Court: Sustained. The telegram speaks for itself.

Mr. Freedman: Well, I am not quoting the telegram. I am simply asking Mr. Askew whether this was in conformance with his understanding, with his intention to carry out the grievance procedure under the contract.

The Court: I don't believe I understand you.
Mr. Freedman: Let me rephrase it.

By Mr. Freedman:

Q. Mr. Askew, you said to the men that they should return to work and permit this matter to be adjusted through the proper channels.

[fol. 142] The Court: He said yes to that.

By Mr. Freedman:

Q. Is that right?

A. Yes.

Q. Now, was the telegram marked Plaintiff's Exhibit 2 pursuant to that statement?

Mr. Scanlan: Objection, sir. The telegram speaks for itself.

The Court: Sustained.

Mr. Freedman: I am not talking about the telegram as such. I am asking whether he sent the telegram pursuant to his statement to the men to take the matter through proper channels.

The Court: The objection is sustained. It speaks for itself.

By Mr. Freedman:

Q. Now, Mr. Askew, did you hold any meetings with your agents, with your other officials in the union, to discuss ways and means to get the men back to work?

A. Several times every day, sir. We stay together all day every day now.

Q. Did you observe whether all of your other officials, fellow officials were actually addressing the men and attempting to get them to go back to work?

[fol. 143] A. I seen them all at one time or another addressing the men and urging the men to return to work and allow us to process this matter through proper channels.

Q. You heard them yourself?

A. I heard them myself, sir. Some of them stood right beside me, especially John Smith.

Q. Was this done every day?

A. Every day, sir.

Q. Did you see your men every day since Friday at various times during every day, addressing the men, urging them to go back to work?

A. Yes, sir.

Q. Mr. Askew, all during this time, have the union agents manned the dispatching center and dispatched men to the ships?

A. Every morning, sir, we have some men there, what we can spare for a short period, and they have dispatched men every morning, Sunday morning, Monday morning, and this morning, and also Saturday morning. Every morning they have dispatched men.

Q. In other words, there hasn't been any time that the union agents were not available there dispatching men to the ships?

A. That is right; they would be there for awhile every morning, sir.

Mr. Freedman: Cross examination.

[fol. 144] . Cross examination.

By Mr. Scanlan:

Q. Now, Mr. Askew, I think you testified that on Saturday morning—

Mr. Freedman: By the way, Your Honor, I don't know whether those telegrams were offered in evidence. If not, I offer them now.

The Court: Yes, they were offered in evidence and admitted. No, I don't believe so.

Mr. Scanlan: I don't think so.

Mr. Freedman: Well, if he doesn't, I will offer them myself. He closed his case without offering them. I will

offer those telegrams. I think Your Honor ought to have them.

The Court: They are admitted. They have been testified to by all sides, and they are certainly in the evidence, whether they are offered or not.

Mr. Freedman: I think it makes a big difference. The record wouldn't be complete, and, as a matter of fact, there is a question as to whether or not—

The Court: Exactly. They are in.

Mr. Freedman: That is why I offered them, Your Honor.

The Court: Exactly.

[fol. 145] (Exhibits Nos. P-1, P-2, and P-3 were received in evidence.)

The Court: All right, Mr. Scanlan.

By Mr. Scanlan:

Q. Mr. Askew, I believe that you testified on Saturday morning all your officials were at Pier 98 in the morning; is that correct?

A. I didn't say they were all there in the morning. I said we have all been together, and I am not sure about Saturday morning. Saturday morning was the first morning. Some of them might have been late Saturday morning getting to the pier.

I think all of them did come there sometime during Saturday morning, because that is where I gave the orders. I gave the orders for my officials to meet at the Bourse Building at twelve o'clock.

The Court: Is that where your office is?

The Witness: No, sir, my office is at the Lafayette Building, a half block from the Bourse Building.

By Mr. Scanlan:

Q. Well, are you sure now whether or not all of your officials, that is the delegates of your local, were present at Pier 98 on Saturday morning?

A. I am not positive about Saturday morning. That was [fol. 146] the first real morning of the dispute. I think sometime or other they came there during Saturday morning. I am not positive.

Q. Was Mr. Smith present at Pier 98 on Saturday morning?

A. He came there later. He was there earlier, to the best of my recollection.

Q. Now, all of the officials attended this meeting in Mr. Corry's office on Saturday at around noontime, isn't that correct?

A. Right.

The Court: Is Mr. Corry's office in the Bourse Building?

The Witness: Yes.

The Court: I am trying to connect the places here. All right.

Mr. Scanlan: Mr. Corry is the Executive Secretary of the PMTA.

The Court: Yes, I know, but I didn't have his place of business.

By Mr. Scanlan:

Q. Now, isn't it true at that meeting you told Mr. Corry and Mr. Muldoon and Mr. Sobelman that the knocking off of the vessels on Saturday morning was unauthorized?

A. Yes.

Q. And didn't you also tell Mr. Corry and Mr. Muldoon [fol. 147] and Mr. Sobelman that you did not condone the action of the men in knocking off the vessels?

A. Yes.

Q. And didn't you agree to go down to the hiring center on Sunday and urge the men to go back to work?

A. Yes.

Q. And didn't you agree that this setback provision was covered under the contract?

A. We didn't discuss that at length, but I did agree that we have a setback provision in the contract and that some

ruling had been made on it by an arbitrator and that an appeal was taken to the ruling.

Q. And didn't you tell Mr. Corry, Mr. Sobelman, and Mr. Muldoon, that while you did not like the arbitrator's ruling, nevertheless it was binding on your union?

A. I told the committee of your association at the Bourse Building that Judge Body had handed down a decision; even though an appeal was taken to it, nevertheless we were going to live up to that decision, unless there was a change, it was repealed or something.

Q. You said you were going to live up to Judge Body's decision; is that correct?

A. His ruling.

Q. His ruling?

[fol. 148] A. Yes.

Q. And didn't you also say that you were going to live up to the arbitrator's award?

A. We didn't say much about the arbitrator's award. The only thing I said about the arbitrator's award was that I thought the arbitrator made a bad decision. I think the arbitrator's award is a bad award.

Q. Well, in spite of your opinion, didn't you tell Mr. Corry and Mr. Sobelman and Mr. Muldoon that while the arbitrator's decision might have been a bad decision that you were bound by it?

A. I told him that we were obeying the orders of Judge Lord—Judge Body, even though an appeal had been taken to Judge Body's ruling, that we were going to abide by it, and, furthermore, I didn't think we should knock off any ships. I thought we should try to process the thing, the grievance, if we had one, through the proper channels. I feel that is better for everybody, better for the longshoremen and better for the port, and better for the city.

Q. Now, Mr. Askew, these circulars that have been introduced in evidence, referring to Respondent's Exhibit 1 and Respondent's Exhibit 2, I understand you to testify that those circulars were prepared in consultation with Mr. Freedman's office; is that correct?

[fol. 149] A. This first circular—both of the circulars were dictated by me.

Q. They were dictated by you?

A. Yes, and we got advice from the lawyers with respect to any aspect of the circular that might be in violation of the law, as we always do.

Q. Didn't you previously testify that one of those circulars was prepared by Mr. Weiner in Mr. Freedman's office?

A. This circular—

Mr. Freedman: He did not so testify. He absolutely did not so testify, and I think it is improper to try to mislead him.

The Court: It is my recollection. What difference does it make? Ask him again. That was my recollection. Let's not fight about it.

By Mr. Scanlan:

Q. What did you testify regarding the preparation—

A. I stated that I called Mr. Weiner at nine o'clock and asked him if he could make provision in his office with two girls to print a circular, to mimeograph a circular.

Q. Which is that, please?

A. Let me finish, please.

He had me wait until he made a few telephone calls, and he called me back and told me he would meet me there at [fol. 150] ten o'clock with his two girls to prepare the circular. But I dictated the circular myself, and I dictated both circulars.

I dictated one circular to my secretary in my office and the other one was dictated to a secretary in Mr. Freedman's office. I dictated both circulars.

Q. So then neither one of those circulars was dictated or prepared by Mr. Weiner in Mr. Freedman's office?

A. You said one of them was?

Q. I said neither one was?

A. Neither one was, I dictated both of them.

Q. Now, Mr. Askew, you have also identified the two telegrams which were marked P-2 and P-3, which have been admitted into evidence. Now, referring to the telegram marked P-3 for the moment, who prepared that telegram?

A. This telegram was prepared with the help of counsel.

The Court: Did you say prepared by counsel?

The Witness: With the help of counsel.

The Court: With the help of counsel.

By Mr. Scanlan:

Q. Which counsel?

The Court: With the help of counsel he said.

By Mr. Scanlan:

Q. With the help of counsel?

[fol. 151] A. Yes.

Q. Was that Mr. Freedman?

A. Mr. Weiner.

Q. Mr. Weiner.

A. And Mr. Freedman.

Q. Now, referring to the other telegram, P-2, who prepared that telegram? This is P-2.

A. This telegram was prepared with the help of counsel.

Q. Was that by Mr. Weiner or by Mr. Freedman or both?

A. Mr. Freedman.

Q. Mr. Freedman. Now, is this language in the telegram which you signed in which you said you did not intend to be entrapped into perpetrating the infamous award of Mr. Weiss, is that your language or is that Mr. Freedman's language?

A. That is both of our language. We worked it out together, Freedman and I, and the other officials. We wanted that language in there.

Q. You agreed to that language before this telegram was sent, did you not?

A. Yes.

Q. And do you think that this language conveys to the PMTA that you intend to be bound by Mr. Weiss' award?

Mr. Freedman: Objection.

The Court: Overruled. We have the credibility involved [fol. 152] of this witness.

Answer the question, please.

The Witness: What was the question?

Mr. Scanlan: Would the Reporter please read the question.

(The question was read.)

The Witness: I don't think it shows that we didn't intend to be bound by it.

By Mr. Scanlan:

Q. So then you do intend to be bound by the award?

Mr. Freedman: Objection. This is a conclusion. Your Honor, this matter is now before the Court of Appeals for this Circuit, and this union has taken a position that that award is wrong, that Your Honor's decision is wrong, and we have a perfect right to appeal.

He is now asking him whether he is going to be bound by it regardless of anything. This is a matter for the Courts, Your Honor.

The Court: No, it is a question now of the credibility of this witness. He said earlier one thing, and now counsel has asked him something else. It is a question of credibility.

You may proceed, sir. We understand your position. Overruled.

[fol. 153] By Mr. Scanlan:

Q. Will you answer my question, Mr. Askew.

Mr. Freedman: Is Your Honor asking him to pass judgment on—

The Court: I am not asking him anything. Counsel is asking him.

Mr. Freedman: Well, I am going to object—

The Court: You are objecting. You have objected. Now, please, sit down. You are trying to run this Court.

Mr. Freedman: I take exception to Your Honor's very—

The Court: You are very repetitive. You say the same thing over and over again.

Mr. Freedman: Well, this is the way I feel it has to be done, Your Honor. I am not trying to run this Court.

The Court: And you are not going to, my friend. You are not going to.

This is a question of credibility, and he may ask the question.

All right, sir; did you understand the question?

The Witness: What is the question? Read the ques-
[fol. 154] tion, please.

(The question was read as follows:

“So then you do intend to be bound by the award?”)

The Witness: I don't understand the question. I don't understand the question.

Mr. Scanlan: Would the Reporter please read back the last two questions or three questions.

(The prior question was read as follows:

“And do you think that this language conveys to the PMTA that you intend to be bound by Mr. Weiss' award?”)

The Witness: Where does the award fit into this picture?

By Mr. Scanlan:

Q. You are not answering the question.

The Court: He is not answering the question.

Mr. Freedman: I think he is, Your Honor. He is absolutely answering the question.

I made the statement in this Court—if Your Honor wants to take the witness out, then it cannot be said I am making any suggestion to him.

His answer was a response to the question.

The Court: It was not responsive.

[fol. 155] Now, Mr. Askew, you will answer the question, please.

The Witness: What is the question?

Mr. Scanlan: Will the Reporter please read the question.

(The question was read as follows:

"So then you do intend to be bound by the award?")

The Witness: I don't understand the question.

By Mr. Scanlan:

Q. Then I will ask you this question, Mr. Askew: Do you or do you not intend to be bound by the award of the arbitrator?

Mr. Freedman: Objection.

The Court: The same thing. He says he doesn't understand the question.

The Witness: I intend to be bound by the contract.

By Mr. Scanlan:

Q. Does that include the award of the arbitrator?

Mr. Freedman: Objection.

The Court: Question of credibility. Overruled.

The Witness: I intend to be bound by the contract.

[fol. 156] By Mr. Scanlan:

Q. I don't think you have answered my question, Mr. Askew.

The Court: The Court has said that he hasn't answered the question. He has asked him to answer the question. He refuses to answer the question. He says that he intends to be bound by the contract. You have asked the question twice. That is enough.

Next question?

Mr. Freedman: I didn't hear what Your Honor said.

The Court: Next question, if you have any.

Mr. Scanlan: Yes, I do, Your Honor.

By Mr. Scanlan:

Q. Now, Mr. Askew, you said, as I understand your testimony, that you addressed the membership every day, I believe, from Saturday up until the present time. Now, you didn't mean that you addressed the entire membership of your union, did you?

A. I stated that I addressed all of the men down at Pier 98, and I think that pretty much all of the men who were involved on those two ships that are in dispute at Pier 98 have been at that pier every day since the inception of the dispute. I stated that I addressed those men, because they are the crux of the dispute, and certainly don't all of our men work at Pier 98 at one time. There are probably [fol. 157] maybe a hundred men or two hundred men down there, two hundred men I would say at most.

Q. Now, Mr. Askew, on Sunday morning where did you address the men?

A. On Sunday morning?

Q. Yes, sir.

A. On Sunday morning I was at Pier 98. I left Pier 98—

Q. What time did you get there?

A. Sunday morning I got to Pier 98, it must have been about eight-thirty, maybe eight o'clock.

Q. What time were the men supposed to report for work there?

A. Eight o'clock, and Sunday morning I had three thousand copies of a circular to distribute.

Q. I am not asking about that, Mr. Askew. I am asking about the men that you addressed. Now, how many men did you address at Pier 98 on Sunday morning?

A. I addressed them all at Pier 98 on Sunday morning.

Q. How many men would you estimate were there?

A. There must have been three or four hundred. There were men there Sunday that weren't involved in the dispute. Longshoremen were there Sunday as spectators. I talked with them. I asked a bunch of them did they have jobs.

I didn't think that many people were involved or that many people were hired to work at Pier 98. There must [fol. 158] have been 150 or two hundred men at Pier 98 on Sunday who weren't working, who were there just to see what was going on.

Q. Now, Mr. Askew, on Sunday morning, when you addressed these men at Pier 98, what did you tell them?

A. I told them to return to work and allow this grievance to be processed and handled through the proper channels.

Q. Did you tell them that their work stoppage was unauthorized?

A. Yes. I told them much more than that. It would take me a half hour to tell you all I told those men on Sunday. I told them quite a bit.

Q. Did you address any of the men who were ordered to work the Murphy Cook ship at Pier 96?

A. Sunday.

Q. Yes, sir.

A. Sunday I talked to the men that were supposed to work the Murphy Cook ship. I personally talked with one gang to the extent that I was able to get them to return to work. They actually went to work, because two mem-

bers of the gang, the foreman and one of the deckmen, came to me and said, "What do you want us to do?"

I said, "I want you to go to work," because I talked to one of them on the telephone Saturday night.

"We are trying to get our gang in."

[fol. 159] Then I went and yelled several times and yelled to the men, said, "Let's go to work. Let's go to work." And the last time I yelled to the men, "Let's go to work," John Smith came and said, "I want to stand beside you, Askew, and when you yell to the men, I am going to do the same thing."

He and I together yelled to the men to go to work. The only one we did get to go to work was this one gang.

Q. Did you appear at the hiring center on Sunday morning?

A. I was there a short while.

Q. Did you address the men?

A. I didn't address the men, no.

Q. How many men were there when you arrived?

A. I didn't take notice. I just went to the hiring center for a few minutes and talked to somebody, Johnson—I am not quite sure which agent was there at that time—but they all left when I did, because I had in my car the circulars to be distributed, and I made some provision to have circulars sent all up and down the line to the other ships.

I sent circulars to all of the ships, and I left Pier 98 and went to Pier 38 and 40, because two men went down there and told me that if some of you men go to 38 and 40 and tell the men to go to work, they will turn to; but they stand out there and won't turn to.

We went down there. I parked my car, and Talmadge [fol. 160] stood there and addressed those men, and not a single man would go in the gate and go to work.

Then we left and went home.

Q. Now, Mr. Askew, on Monday morning, were you at the hiring center?

A. Monday morning, yes, I was there for awhile.

Q. What time were you there?

A. I am not sure. I was there kind of early.

Q. Did you address the men on Monday morning?

A. Where?

Q. At the hiring center.

A. No, I didn't address the men at the hiring center any morning. The agents did, but I didn't any morning.

Q. How many men were at the hiring center when you were there?

A. I didn't notice. I know inside the dispatching office was packed, but I didn't pay any attention to who was on the outside. I talked to the officers on the inside who were not with me on Saturday night when we made up this circular. Then we decided to not distribute the circular. We thought something else should have been done to it, and we made some changes in it and had it printed again on Monday.

Q. Well, now, did you notice the men that were on the outside of the hiring center on Monday morning?

[fol. 161] A. No, I told you once before I didn't notice them on the outside, didn't pay no attention to them.

Q. Wasn't there a large group of men outside the center on Monday morning?

A. There might have been. I didn't notice.

Q. Now, there is a microphone at the hiring center and a public address system there, isn't there?

A. Yes.

Q. And this microphone and public address system have been used in the past to convey messages to the men; isn't that true?

A. Yes.

Q. And you yourself have used this microphone at times in the past, have you not?

A. Yes.

Q. Did you use the microphone on Monday when you were at the hiring center?

A. I didn't use the microphone any day at all to address the men about returning to work or anything about this dispute.

Q. Wouldn't it have been better to use the microphone to address all of the men rather than talk to the men in groups?

A. Well, the agents, Mr. Scanlan, addressed the men down at the hiring center. We have four agents, and we have two secretaries, and we have a president, and we all [fol. 162] engaged in the same thing. All of us are doing one thing or another trying to get these men to return to work. The president does not have responsibility of this entire thing. As a matter of fact, he couldn't hold it if he dropped dead.

Mr. Scanlan: If Your Honor please, I submit the answer is not responsive to my question.

The Court: It is not, but we will let it in the record.

Mr. Freedman: What was Your Honor's ruling?

The Court: I said it is not responsive, but we will let it in the record.

Mr. Freedman: I would like to say, Your Honor, I think it is responsive. I think it bears on the point.

The Court: You just disagree with me.

The Witness: Your Honor, may I—

The Court: He has something else he wants to say.

The Witness: Could I have a drink of water?

The Court: Yes.

All right, Mr. Scanlan.

By Mr. Scanlan:

Q. Now, on Monday, after you left the hiring center, where did you go?

A. Monday when I left the hiring center, I went up the [fol. 163] avenue, and after I was in town for about twenty minutes, I came back to Pier 98.

Q. What time did you come back to Pier 98?

A. I don't know. It must have been about 9:30.

Q. Then you didn't go directly from the hiring center to Pier 98?

A. Not on Monday.

Q. Pier 98 is where most of the trouble was, isn't that true?

A. Yes, but that was covered by the agents.

Q. You left that up to your agents; is that right?

A. A lot of things I leave up to the agents.

Q. Now, when you got back to Pier 98, not any of the men were working the ships, isn't that right?

A. That is right.

Q. Now, were you at the hiring center this morning?

A. Yes.

Q. What time did you get there?

A. I was there this morning about eight o'clock, maybe a little before.

Q. And how many men were at the hiring center when you got there?

A. Well, it appeared to be maybe a couple hundred. It might have been a little more when I arrived. When I left it was a large crowd there. There were so many, I [fol. 164] couldn't tell how many. It was a large crowd, because it wasn't too easy for me to get my car out of the gate, when I left.

[fol. 165] Q. Did you use the microphone at the hiring center to address the men that were there?

A. I repeat again, I haven't used the microphone at the hiring center to address the men about this dispute since the dispute has been in progress, not a single time.

Q. Did you talk to the men at all at the hiring center this morning?

A. No more than what men were inside of the dispatching office.

Q. Did you talk to the men who were inside the dispatching office?

A. Talked to some of them, yes.

Q. And approximately how many men did you talk to?

A. It must have been maybe twenty-five or thirty men in the hiring center.

Q. And what did you say?

A. In the dispatching office.

Q. And what did you say to them?

A. Told them they should return to work.

Q. Did you tell them that their work stoppage was unauthorized?

A. Yes.

Q. Now, at any time that you talked to these men from Sunday morning up until this morning, did any of your [fol. 166] men ask you for a union membership meeting?

A. Yes, I had—yes, I had a couple men ask me for a meeting.

Q. Did some say they didn't understand the dispute and they thought it might be resolved if there was a union membership meeting?

A. Could I make a statement, Mr. Scanlan?

Q. Answer my questions, Mr. Askew. That's all I am asking you.

Mr. Freedman: If the statement is an answer—

The Witness: My statement, it would be an answer, yes.

The Court: Now, wait a minute.

The Witness: Could I make a statement in answer to that?

The Court: No, just answer the question. Then you can explain.

The Witness: Yes.

What is the question, sir?

By Mr. Scanlan:

Q. The question was, did any of the men ask you for a membership meeting stating that they didn't understand this dispute and they thought it might be resolved if they had a membership meeting?

A. Nobody said that to me.

[fol. 167] Would you like to know what they said?

Q. You can tell us what they said, if you want.

A. The men that talked to me about a meeting wanted to have a meeting so they could vote as to whether or not

they wanted to return to work, and I said I would not entertain a motion as to whether or not they were going to return to work because you are supposed to be working. Suppose you have two thousand men in a meeting and somebody makes a motion to return to work and five hundred men vote to return to work and fifteen hundred vote not to return to work; what are you going to do then?

I said, you are supposed to work, and every single longshoreman, I believe, understands that he is supposed to work.

That's what we told them. We didn't tell them that this thing was only unauthorized. The work stoppage is illegal; it is in violation of the law, in my judgment. I am not a lawyer, but I think the work stoppage violates the law even, and we are supposed to obey the law.

Q. Now, Mr. Askew, I am happy to hear you say that, and on that basis I will ask you in connection with the telegram which you sent on Monday why you were asking for a grievance or arbitration of this dispute if the dispute at the present time is illegal and in violation of the law.

Mr. Freedman: If the Court please, this is a most mis-[fol. 168] leading question. In the first place, he is talking about an interpretation of the contract.

The other one, he is talking about a dispute.

What Mr. Askew had done here was to ask for a grievance meeting with respect to the dispute and that's entirely different than what Mr. Scanlan is putting to him now.

The whole thing, the whole question is most misleading and it is a real paradox.

The Court: I don't think so.

Answer the question.

The Witness: What?

Read the question, please. Will you read the question, please?

(The question was read.)

A. That's a hard question to answer, I will tell you the truth.

Read it again, please.

I am going to try to answer that question because I want to answer it.

Read it again.

(The question was re-read.)

A. I asked for a grievance or meeting with an effort to try to resolve the thing because irrespective of whether it is in violation of the law or not, and it is in violation of [fol. 169] the law, in my judgment, still it has to be resolved sometime, and how was it going to be resolved? That's what I would like to know.

It has to be resolved one way or the other. You can't keep the ships tied up. If you do, the port will dry up and nobody would have work, business or anything.

So how are you going to settle if you don't sit down and talk about it?

The Court: What is going to dry up?

The Witness: The port, the business in the port.

The Court: Oh, the port? A new word for me.

The Witness: The port, the Port of Philadelphia.

The Court: The port?

The Witness: The port, yes.

The Court: Oh, port, p-o-r-t, port?

The Witness: And furthermore, I would like to say to you that Mr. Muldoon suggested Saturday—the president of your association said to me Saturday—“Maybe if we get together we can settle this thing,” and I am saying in effect the same thing that he said.

The first thing he asked me, “How can we settle this? Maybe we can get together and settle it.”

[fol. 170] By Mr. Scanlan:

Q. Mr. Muldoon—

A. The only difference here is, he sent a telegram, and I tell you now, I would not have sent a telegram. I

would have called Mr. Corry up, but Mr. Corry is 'foxy. He starts sending telegrams, and he was doing exactly what we say he was trying to do, entrap us. That's why he sent a telegram.

He could call me up and talk with me on the telephone, either he could walk down to my office and talk with me. He doesn't have to send me a telegram. I would be glad to have him in my office, and why he sent a telegram, he is trying to trick us one way or another.

Q. I think you testified what is in Mr. Corry's telegram is true, did you not?

Mr. Freedman: Now, if the Court please, here we go again. I would like to make my position very clear on the record here now.

The Court: It is very clear.

Mr. Freedman: No, I want to set it straight for the record.

An unauthorized strike or a work stoppage is one thing. A dispute taken to grievance is something completely independent.

The Court: You said this before.

[fol. 171] Mr. Freedman: Sir?

The Court: Don't you think you said this before this afternoon?

Mr. Freedman: Apparently I didn't make myself clear.

The Court: You made yourself very clear. I ruled against you, sir, and when you repeat and repeat and repeat—

Mr. Freedman: There is nothing illegal about taking a dispute to grievance, Your Honor.

The Court: We understand that. We understand, but you are repeating yourself and I have ruled against you consistently. By this time you ought to know that I am going to rule against you.

Mr. Freedman: But I still have got to do it.

The Court: Do you like to hear yourself talk or do you like to hear me talk?

Mr. Freedman: I don't like to hear myself dwell on it, but I have got a job to do.

The Court: Let's get on with the case.

By Mr. Scanlan:

Q. Now, Mr. Askew, referring to your conversations with Mr. Muldoon at the meeting on Saturday, didn't Mr. Muldoon make it clear to you that the PMTA did not in- [fol. 172] tend to modify this setback provision?

A. He made that statement.

Q. And didn't he also make the statement that the PMTA did not intend to rearbitrate this issue?

A. He didn't say that. If he said that, sir, it wouldn't have mattered to me because we had an arbitrator who ruled one way five times and then reversed himself—ruled one way four times and then reversed himself on the fifth time. An arbitrator did that to us, so I think maybe an arbitrator might reverse himself or somebody else might reverse himself because we had it done to us. An arbitrator ruled five times he had no jurisdiction to fix the gang size—four times—and the fifth time, he said he may have—he is not infallible and he may fix the gang size.

Q. Well, now, Mr. Askew—

A. And I haven't forgotten that one bit.

Q. Mr. Askew, I take it, then, what you are asking for is to rearbitrate this dispute; is that correct?

A. Didn't ask them about that one bit. He asked—Mr. Muldoon said to me, "Do you think if we got together today we can work this out one way or another?"

I said, "Well," I said, "can you get your people? My folks are here."

He said, "I will make a few phone calls and I will talk [fol. 173] to you and I will let you know."

He come back. He said, "We will meet at 12 o'clock and try and settle it."

Mr. Scanlan: Now, if Your Honor please, I submit that answer is not responsive to my question and I would like to ask the question again to Mr. Askew.

The Court: You may ask it.

By Mr. Scanlan:

Q. Mr. Askew, as I mentioned and asked you previously, I take it now on the basis of your last two answers, that what you are asking for at the present time is to rearbitrate this dispute?

Mr. Freedman: Objection.

The Court: Well, I think it is a proper objection. Be a little more specific, Mr. Scanlan.

By Mr. Scanlan:

Q. Mr. Askew, you have testified—

The Court: Arbitrate presently, but that arose on Friday morning; is that right?

Mr. Scanlan: Yes, Your Honor. I am tying it into that.

Mr. Freedman: That dispute is a matter of the past, Your Honor. This is a brand-new dispute.

The Court: It might be to you, but I have already ruled [fol. 174] that it isn't.

By Mr. Scanlan:

Q. Mr. Askew, the arbitrator ruled that the employers have the right to set back without qualification?

A. That's right.

Q. Isn't that correct?

A. That's right.

Q. And this ruling was made as an interpretation of the contract between the parties?

A. That's right.

Q. And I am asking you now, are you asking the PMTA to rearbitrate the award of Mr. Weiss?

A. I did not ask the employers to rearbitrate. I asked them—I said in my letter that I was invoking Clause 28, and I want them to set up a meeting so that we can try to resolve this dispute. I didn't say "arbitrate the dispute"; try to resolve it.

Q. Isn't it true, Mr. Askew, that when you left the meeting on Saturday that it was agreed that the only way you could resolve this dispute since it was covered by the arbitrator's award was for the union to get the men to go back to work?

A. There was no agreement to that effect. As a matter of fact, we made absolutely no agreement: We promised that we would make every effort that we could to get the [fol.175] men to go to work Sunday, and your people testified to that and you also stated that in your telegram, that we stated to your people that we were going to do all that we could Sunday to get these men to go to work.

Q. Isn't that true? Didn't you agree at the meeting on Saturday at noontime that you would do everything you could to get the men to go back to work?

A. We agreed, we stated that we were going to do all that we could to try to get the men to go to work and we did that.

Q. Well, do you think sending a telegram on Monday, and asking for a grievance and arbitration and calling the award an infamous award is getting the men to go back to work?

A. Oh, I think the award is ridiculous.

Q. Do you think if you notified the men and tell your men that you think the award is ridiculous—

A. I didn't tell the men that.

Q. —that they are going to go back to work?

A. I didn't tell the men that.

Q. I am just asking you the question, Mr. Askew, do you think that if your men know that you feel that this award is ridiculous as you have just testified that they are going to go back to work?

Mr. Freedman: Your Honor, this involves so much speculation, he is probing into what the witness might think [fol.176] in the future, I think that purely it is a matter of speculation. The question is highly improper. The question is evidentiary in any sense of the word.

The Court: Overruled; exception noted.

By Mr. Scanlan:

Q. Would you answer the question?

A. Would you read the question back, please?

(The question was read by the reporter as follows:

"Q. Well, do you think sending a telegram on Monday, and asking for a grievance and arbitration and calling the award an infamous award is getting the men to go back to work?")

A. This doesn't have any effect on the men. The men don't know a thing about the telegram. They didn't know what was in the telegram or anything and what I have said to you—

By Mr. Scanlan:

Q. Mr. Askew—

A. And what he said in the telegram, I never sent to to the men.

Mr. Scanlan: I believe I asked another question related to Mr. Askew about "ridiculous."

Would you read that?

That's the question that I want answered.

(The question was read by the reporter as follows:

[fol. 177] "Q. I am just asking you the question, Mr. Askew, do you think that if your men know that you feel that this award is ridiculous as you have just testified that they are going to go back to work?")

Mr. Freedman: I think he did answer that, Your Honor.

The Court: No.

Mr. Scanlan: I don't think he did.

Mr. Freedman: The record will show.

A. The men don't know my feeling about the award. I haven't even discussed it with them, except it was made—it was affirmed by a judge, and knocking off the ship and

walking off the job was in violation of the law and also it was without the sanction of the union.

Mr. Scanlan: I have no further questions.

Redirect examination.

By Mr. Freedman:

Q. Mr. Askew, what has been the custom in the past regarding arbitration of specific disputes, whether they relate to specific disputes or whether they carry forward—

Mr. Scanlan: Objection.

The Court: Sustained.

[fol. 178] By Mr. Freedman:

Q. Mr. Askew, is there any custom and practice in the port regarding the arbitration of particular disputes?

Mr. Scanlan: Objection.

By Mr. Freedman:

Q. —as president—

The Court: Sustained.

Mr. Freedman: May I ask on what grounds, sir?

The Court: No. You may ask, but I don't choose to answer it.

By Mr. Freedman:

Q. Mr. Askew, does an award in any particular case extend over to any other dispute?

Mr. Scanlan: Objection.

The Court: Sustained.

Mr. Freedman: Your Honor, I am going to make an offer. I don't know whether Your Honor is excluding this because of any possible leading character—I have tried to take out the leading character, if there was any—or be-

cause of the substantive nature of the question, because if it is the latter, I would like to make an offer of proof.

The Court: You may make an offer of proof.

Mr. Freedman: I offer to prove by this witness that throughout the years, whenever a dispute is grieved and [fol. 179] arbitrated, the decision which is rendered relates solely to that dispute and no other with the result at any time in the future, even though the same principle, the same issue may be involved, it is regrieved and rearbitrated and, as a matter of fact, we have specific evidence here in an arbitrator's award, Father Comey's award, which on four occasions, the same issue came up that he held one way; the fifth occasion, the same question came up and he reversed himself.

I offer to prove that the custom and practice in this port under the contracts down through the years, that the decision whenever it is made relates only to that specific set of facts and no other, and when you ask under these circumstances whether a witness is going to be bound by that award, it means by that award which is past already. Whatever claim they might have made for back pay, that is done. They can't make any further claim. They are bound by it.

But this decision does not extend as res judicata to any other case in the future.

The Court: Is that your offer?

Mr. Freedman: That's my offer.

The Court: Refused.

The question you pose is a legal question and one for the Court to decide and not this witness.

Mr. Freedman: Is what?

[fol. 180] The Court: Next question.

One for the Court to decide and not this witness.

Mr. Freedman: Not the custom and practice, Your Honor. That's not for Your Honor to make the decision, what the custom and practice is in the port.

The Court: Refused, for that and other reasons, for the reason I gave and other reasons.

Mr. Freedman: This is a question of fact, Your Honor.

The Court: Refused.

Mr. Freedman: Exception, Your Honor?

The Court: Exception noted.

Anything else?

Mr. Freedman: I have made my statement.

Oh, you mean from this witness?

The Court: Any other questions of this gentleman?

Mr. Freedman: I think so.

I take it, then, that I need not pursue this line of examination because Your Honor is not going to permit me to pursue it?

The Court: No.

Mr. Freedman: Since you consider this as a matter of [fol. 181] law and will not consider it as a matter of fact; am I correct, sir?

The Court: Yes, sir.

Mr. Freedman: And my objection is of record.

The Court: Yes, sir.

By Mr. Freedman:

Q. Now, Mr. Askew, Mr. Scanlan asked you a question before that you indicated you did not understand, and I would like to pursue that. I think he asked you—and I will do my best to phrase it as accurately as I can—I think Mr. Scanlan asked you whether you intended to be bound by the arbitrator's award, and you said you did not understand that question; is that right?

Mr. Scanlan: I object, Your Honor. This matter has been covered in the cross-examination.

Mr. Freedman: Well, you are not going to deprive me of the right to rebuttal, are you, Mr. Scanlan?

The Court: It is not rebuttal; it is repetitious.

Mr. Scanlan: It is repetitious, and it is not proper.

The Court: Your next question? What is your next question?

Mr. Freedman: He opened the door on cross-examination, [fol. 182] and I would like to pursue it on rebuttal. This is my right, Your Honor.

The Court: Maybe it is; I don't know whether it is or not, but because you say it is your right doesn't make it your right. The Court decides whether or not you have a right to do this. I will rule out that question.

What is the next question?

Mr. Freedman: If I don't make myself clear, Your Honor wouldn't have—

The Court: Your position is very clear. Go ahead.

By Mr. Freedman:

Q. Mr. Askew, did you consider the Weiss decision to apply to any other dispute other than the one that was before Mr. Weiss on a specific set of facts?

Mr. Scanlan: Objection.

The Court: Sustained.

We have covered that two or three or four times.

Mr. Freedman: I don't think so, Your Honor.

The Court: I think we have.

Sustained.

Mr. Freedman: Well, you have permitted Mr. Scanlan to ask the question ad infinitum, and I am trying to explore it now so that at least we will get the record as clear as we [fol. 183] can. If it was all right for Mr. Scanlan, it should be all right for me in rebuttal.

The Court: I have ruled, sir.

Mr. Freedman: Exception, Your Honor.

The Court: 22, if you need them, or however many you want.

Mr. Freedman: Sir?

The Court: You have all the exceptions you want. I have given it to you once. Now you want another one. Shall I say "exception" again, sir?

Will you proceed with the next question?

Mr. Freedman: I think, I am sure I have an automatic exception, but I say it, Your Honor, in order to suggest to Your Honor—

The Court: Don't be so worried, Mr. Freedman. Let's go on with the question.

Mr. Freedman: I am worried, Your Honor. I take this thing very seriously.

The Court: I take it very seriously, too, but I think you are trying your best to prolong the proceedings.

Mr. Freedman: Sir?

The Court: I think you are doing your very best to prolong the proceedings, asking questions that are repetitious. [fol. 184] Mr. Freedman: Your Honor, I object to that statement.

The Court: You do? That is too bad.

Mr. Freedman: I certainly do.

The Court: That is too bad.

Mr. Freedman: I don't think it is fair.

The Court: I am sorry, sir, that's the way I feel, because you have been repeating yourself and repeating yourself. Now, go ahead.

Mr. Freedman: Well, that may be Your Honor's interpretation, but I don't look at it that way.

The Court: I might be wrong. I have been in other cases. I have been reversed by a higher court, so I might be wrong in this.

Mr. Freedman: I have no further questions, sir.

The Court: Mr. Askew, you have been in court all afternoon?

The Witness: Yes, sir.

The Court: And you have seen a number of people here in this audience?

The Witness: Yes.

The Court: Including members of your union; right?

The Witness: Yes, sir.

[fol. 185] The Court: Other than officials of your union?

The Witness: Yes, sir.

The Court: So what you have testified to here has been heard not only by officials of your union but members of the union who work on the waterfront?

The Witness: Yes, sir.

The Court: All right.

Mr. Scanlan: I have no questions, Your Honor.

By Mr. Freedman:

Q. Might I ask, Mr. Askew, did you invite any members up to this hearing?

Mr. Scanlan: Objection.

The Court: Overruled.

A. No, I didn't invite any members to the hearing.

By Mr. Freedman:

Q. And did you suggest to any members that they come up to this hearing?

A. No, no, sir.

Mr. Freedman: That's all.

The Court: Next witness.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Freedman: Mr. Moock, please.

A Voice: Your Honor, may I have the pleasure of addressing the Court?

The Court: No, no.

[fol. 186] A Voice: If they keep asking—

The Court: Now, wait a minute, will you please sit down. Mr. Freedman is the attorney for the respondent in this case. You act through him, not through yourself.

Mr. Freedman: I would like to say for the record that I don't see any objection to any member of the union coming up here and I don't see any reason why there should be any criticism of any member coming up here.

The Court: There wasn't any criticism.

Mr. Freedman: Of anybody. I think every member has a right, the whole union has a right to be here at this hearing and listen to what is going on.

The Court: I agree with you one hundred percent, sir.

Mr. Freedman: Well, I don't understand why Your Honor made such a point of it with the witness, as though it is something to be severely criticized for.

The Court: I didn't criticize at all. He just said there was no publication of his ideas and he published them right here in court.

Mr. Freedman: Well, did he have any alternative—

The Court: No, I am just asking.

Mr. Freedman: These men are entitled to know what [fol. 187] he thinks about it.

The Court: Exactly, and they probably do. They have been here.

Mr. Freedman: I am sure that Your Honor didn't keep this hearing secret. It was certainly—

The Court: No, I know I read it in the paper this morning, so everybody reads the paper, I assume.

[fol. 188] Mr. Freedman: Everybody knew about the hearing before we did. As a matter of fact, the longshoremen is just as good as anybody else in the public. They have got a right to be here.

The Court: Indeed, they are citizens of the United States. They can be present. I haven't excluded anybody from this hearing.

Mr. Freedman: I couldn't understand why Your Honor sort of implied these people didn't have a right to be here.

The Court: I didn't imply anything. You heard the question; you heard his answer.

Mr. Freedman: So that I am not sure whether I took an exception to your questions of the witness, but if I didn't, I want to make it clear that I object to it now, that is, regarding the presence of the other members in this courtroom.

JAMES T. MOOCK, sworn.

Direct examination.

By Mr. Freedman:

Q. Mr. Moock, what is your position?

A. I am the fourth International Vice-President of the [fol. 189] ILA.

Q. For how long have you been on the Philadelphia waterfront?

A. Since 1925.

Q. And since what time have you been holding office?

A. I became Assistant Secretary of Local 1291 in 1946. I became Atlantic Coast District Vice-President in 1951 and became an International Vice-President in 1955.

Q. And you have been serving as an International Vice-President since that time?

A. That is correct.

Q. Is the Philadelphia area within your jurisdiction of the International Union?

A. Yes, it is, from Trenton in New Jersey to Artificial Island, 18 miles below Wilmington, Delaware.

Q. Now, in your capacity as International Vice-President did there come to your attention the matter, the episode which is involved in this hearing?

A. Yes, it did.

Q. That is the work stoppage which started on Friday?

A. Yes, it did.

Q. Would you tell the Court what you know about it from the very beginning?

A. At slightly after 8:00 o'clock on Friday morning I went into the dispatching center as I do every morning. I [fol. 190] went over to the representative of the PMTA there, Joe Evans, and I says, "What does it look like this morning?"

He said, "We have 53 gangs." He says, "We have 12 setbacks."

I says, "12 setbacks and the sun shining!"

He says, "Yes, you have got 12 setbacks and one of them is a problem at Pier 98."

I immediately got back into the car; I went over to Pier 98.

In the meantime some of the men had drifted away. Other of the men were belaboring Mr. Vincent Smith and Mr. Monroe of Murphy-Cook because they had been set back. They had been told that they had been set back on their arrival at the pier. Some of them said quarter to eight and some said at ten minutes of eight.

I then looked around. There was a very few then, and I then eventually found out that also the States Marine ship on the north side of 96 had not turned to.

I hung around there a little while, trying to find out what all the details of the case was, and I found out that they had worked the day—that they had been there the day before, that they had stood by on account of the snow, and at about 3:30, 3:00 or 3:30 in the afternoon when they saw that the snow wasn't going to let up, that they got [fol. 191] sent home and they were ordered to appear at 8:00 o'clock in the morning.

Most of them seemed to be complaining to me that here were three ships, three other ships at Pier 98 that were working, and these two were not.

I then looked around. There was very few then, and other three ships and asked them at what time their first draft had gotten out, and they told me approximately about 8:30.

I then went back out to the gate. By the time I got there, there was very few men around there.

I then got in my car and went back to the office, and I heard that there was going to be a problem there at 1:00 o'clock.

I got tangled up into something else, so that when I actually got back to Pier 98, it was about five or ten after 1:00, and at that time again some of the Murphy men were belaboring Smith and Monroe, and I say, "You are finding fault with the wrong people," that they are not

responsible for this setback, that the setback has been decided by Cunard, and, I says, probably by some man who was 100 miles away from here where it is snowing; he probably took the night report, night before weather report which said at noontime that it would stop and, I says, "That is why we are in the situation."

[fol. 192] I then took a walk down to these three ships—no, in the morning, it was two ships, and then at 1:00 o'clock another ship came in that had been in Camden, so that made it three ships in the afternoon on the north side of Pier 98.

I hit the first—the first open door I came to, there was some of the men who were working for McCarthy. One of them very vehemently said to me, "This is an abuse. It has been going on for five or six months and it is about time it stopped, and what you should do is go along and knock all the ships off that is working."

I says, "No, we cannot do that." I says, "We have a contract and we are bound by that contract."

That is the balance of my discussion on that day.

On Saturday morning, I got there, I would say, approximately again about quarter after 8:00. I went to the center first and then I went over to 98, and as I got there, Paul Johnson came along, and he says, "I was just talking to Tobin," and I am not sure whether he said Smith or Monroe of Murphy-Cook but he says, "I tried to get them to talk these people into four—giving the men four hours and we could resolve this problem."

I then got into a discussion with a few of the men, and I says, "This thing is not right." I says, "You should [fol. 193] go back to work and let us settle this thing in a proper fashion."

Later on I found out that some of these men had ridden up the avenue and had knocked off other ships.

Paul Johnson then come over and he says, "We have a meeting arranged with the PMTA people at noon."

I was only in rough clothes at that time. I went back home and changed my clothes and I went into the Bourse Building at 12:00 o'clock, a little after 12:00.

Out there we had a meeting in which all the officials of 1291, Carter and myself attended, plus Mr. Muldoon, Mr. Sobelman and Mr. Corry.

We had a discussion and in the discussion I said that it has now developed that this setback clause is being abused. I says, "Yesterday morning was a case where it had been raining at 6:30, it was stopped at 7:00 o'clock, all the ships turned to but these three, and these three cancelled." I says, "To me, with the sun shining, just before 8:00 o'clock, that clause is being abused."

[fol. 194] I can remember Mr. Muldoon saying, "There is no doubt in my mind that an error of judgment has been made by Cunard." He says, "I have no trouble, because I ordered my men—

Q. Who said that?

A. Mr. Muldoon.

Q. The same gentleman that was on the stand here before?

A. Yes.

Q. Go ahead.

A. He said, "What do you think will settle this thing?"

I said, "At this moment it will take four hours to settle it."

I had very little discussions that day.

After we left there, we went back to the Lafayette Building at which a circular was drawn up and was prepared to be put out Saturday morning or Sunday morning.

Q. Now, did you at any time tell the men not to work or to engage in a work stoppage?

A. At no time from Friday morning until this morning at ten o'clock have I ever told anyone not to go to work. I have went out there every day, Sunday included, and I was there every morning after Saturday. I was there no later than seven o'clock in the morning.

Q. Did you talk to the men?

[fol. 195] A. I have talked to the men.

Q. What did you say to them?

A. It seemed to me like every time I took two steps, I was surrounded by another group of ten or twenty men, and I kept continuously telling them, "Go back to work and let us settle this thing in an orderly fashion."

Q. And what did you mean by "orderly fashion"?

A. Through the grievance procedure.

Q. Now, were you on the waterfront where this work stoppage was taking place every day since Friday?

A. Yes, I have.

Q. And in the course of your regular duties, did you observe the other union officials of Local 1291 along the waterfront?

A. Yes, I did.

Q. What did you observe them doing and saying?

A. I saw every one of them telling the men that they should go to work and let's settle this thing in an orderly fashion or manner, whatever expression you want to use. I saw no one specifically in the official family telling the men not to turn to.

Q. Now, when you heard them telling them to go back to work, did they have a ring of sincerity to them?

Mr. Scanlan: I object.

The Court: Sustained.

[fol. 196] By Mr. Freedman:

Q. Mr. Moock, I would like you to identify those officials whom you saw on the waterfront from time to time addressing the men, telling them to go back to work.

A. On Friday afternoon, the one I was with most of the time was Paul Johnson. On Saturday morning, Paul Johnson, Deviney.

Q. Who?

A. Ed Devine. Turk Kane was there. Huggins was there.

Q. Huggins is what?

A. He is the financial secretary.

Q. And Turk Kane, Mr. Kane is what?

A. The assistant financial secretary, and Alex Talmadge was there, and John Smith. John Smith, to the best of my knowledge, he was not there the first thing Saturday morning. If I am not mistaken, he came along a little later. He wasn't there at the very beginning.

Q. Now, how many times during the day would you say that they addressed the men?

A. Down there I can't specifically say how many times they addressed the men, because I know it got to be like a broken record with me, because every time I moved around, somebody wanted to ask me a question; I had to go through the whole routine, all of this, that the men should turn to and let us settle it.

[fol. 197] So I had my hands full telling them, and I couldn't say what they were doing on this side or that side, but I know they were talking to the men, and any time that I was close enough to hear them, they were telling the men to turn to.

Q. So that so far as you were concerned, it was a continuous thing all day long, ever since the—

A. A few times, when I left 98 and went up to the office, there was different groups of men that were in there, and they were telling the men the same thing up in the office.

Q. Now, would you say that it was an all-day proposition with the other officials, too?

A. To the best of my knowledge, I would say yes.

Q. Now, Mr. Moock, I will ask you about the custom and practice which exists here in the port.

Mr. Freedman: Now, if Your Honor is going to adhere to the same ruling, I would make the same offer of proof, to prove by this witness also, particularly since he has been an officer down through the years—

The Court: The same offer, the same ruling.

Mr. Freedman: He has actually served on these panels and is thoroughly familiar with the practice which has been followed under all of the contracts, including the current one.

[fol. 198] The Court: Same offer, same ruling.

By Mr. Freedman:

Q. Mr. Mooock, when you named all of the officials, did you see Mr. Askew down there?

A. Oh, yes, Mr. Askew was there every morning that I can remember. Some mornings he was there before me. Other mornings he came along a little after I got there.

Q. And did you hear what he said to the men?

A. Every time I seen him talking to the men, he was giving them the same story I was giving them, to turn to, let's get this thing settled.

Mr. Freedman: That is all.

The Court: Any cross, Mr. Scanlan?

Mr. Scanlan: Yes, sir.

Cross examination.

By Mr. Scanlan:

Q. Mr. Mooock, you are familiar with the provisions of the contract, the setback provisions, Section 10(6), are you not?

A. Yes, I am.

Q. And under those provisions there are no qualifications attached to the employer's right to set back; isn't that true?

A. That is what Mr. Weiss said in his decision, yes.

Q. And the decision was a result of the dispute which we had back in April, 1965, is that correct?

[fol. 199] A. That is correct.

Mr. Freedman: Now, Your Honor, I am going to object to this line.

The Court: Sustained.

Mr. Freedman: Well, I would like to put my reason on the record.

The Court: All right.

Mr. Freedman: I would like to object to this line, because this is a contempt proceeding, and if Your Honor is going to open the door to the merits of this complaint—

The Court: I have sustained your objection.

Mr. Freedman: Oh, sustained. I still would like to put the reason on the record, so that it appears for—

The Court: You know what I said a little while ago. I have sustained you now, sir. What else can I do?

Mr. Freedman: Just let me put it on the record.

The Court: All right, put it on.

Mr. Freedman: I want to say that Mr. Scanlan is now trying to determine and determine through this witness and elicit testimony, a conclusion which is now for the Court of Appeals to decide and which may be the subject of a dispute in the future.

He is trying to test the merits of the entire dispute instead of this contempt proceeding. Now, if we are go-
[fol. 200] ing to get into the merits, what I wanted to say—and there has been a lot of questioning from him on this source—I think that we ought to throw the whole door open.

I don't think that in this contempt proceeding it has—

The Court: The objection is sustained.

By Mr. Scanlan:

Q. Mr. Moock, under the provisions of the contract relating to the setback, there is no reference at all to sunshine or weather conditions; isn't that correct?

Mr. Freedman: Objection, Your Honor. Again we are going into the contract.

The Court: Sustained.

By Mr. Scanlan:

Q. Now, Mr. Moock, you attending this meeting in Mr. Corry's office on Saturday at noontime, did you not?

A. That is correct.

Q. And at that time when you were present, isn't it true that you and other representatives of the union stated to Mr. Muldoon, Mr. Sobelman, and Mr. Corry, that the work stoppage on the waterfront was unauthorized?

A. That is correct.

Q. And isn't it true that you stated that the work stoppage was illegal?

[fol. 201] A. I never remember at any time saying anything about it being illegal. I did use the expression that as far as I was concerned this was a wildcat strike, but I also said that in my opinion this was an abuse of the setback clause.

Q. Well, isn't it true, Mr. Moock, that you or other representatives of the union at this meeting stated to Mr. Muldoon, Mr. Corry, and Mr. Sobelman, that you did not condone the work stoppage?

A. That is correct. I said that the manner in which this work stoppage came about I did not agree with, and I also said that in my opinion that when the sun was shining before eight o'clock on Friday, that the line of communications somewhere along the line between Cunard and Murphy Cook—and that was the two companies I was more involved with than any other company in this situation—I said that the line of communication is bad, because when one company right alongside of them could decide to work and another company—and that is why I said about Smith and Monroe being abused by the men, and I told the men that it was not their fault, that in my opinion it was Cunard's fault. And I also said that the decision might have been made by someone one hundred miles north of here, New York, where it might be still snowing.

And I can remember Mr. Muldoon saying—

Mr. Scanlan: If Your Honor please, I don't believe this [fol. 202] is responsive at all.

Mr. Freedman: You may not like it, but it sure is responsive.

The Court: Let him go on. Go ahead.

The Witness: I can remember Mr. Muldoon saying, being a stevedore and a steamship agent, "I know the problems that are involved there with the line of communication."

By Mr. Scanlan:

Q. Now, are you finished, Mr. Moock? Have you finished your answer?

A. I think I have stopped.

The Court: Next question.

By Mr. Scanlan:

Q. Now, it is true, however, is it not, that based on what you have just testified to regarding the sunshine and communication that there is nothing in the contract that relates to sunshine.

Mr. Freedman: Objection, Your Honor.

The Court: Sustained.

By Mr. Scanlan:

Q. All right, now, Mr. Moock, is it true that at this meeting you and the other members of the union agreed to tell the men that they should go back to work, that their work stoppage was unauthorized and that you would appear at [fol. 203] the hiring center the next day to inform the men?

A. That is correct, and every morning after Saturday I was there before seven o'clock or around seven o'clock, each and every morning.

Q. All right, now, Mr. Moock, on Sunday morning where were you? Did you go to the hiring center?

A. Sunday morning, yes, I went to the hiring center first thing.

Q. What time did you get there?

A. About ten minutes of seven.

Q. And how long did you remain there?

A. Just a few minutes.

Q. And how many men were at the hiring center while you were there?

A. There was some. I wouldn't approximate a guess, because I didn't hang around there too long. I went right back up to 98.

Q. Well, now, just a minute.

A. I would like to qualify what I am saying. I found out that there was three ships working that morning, and I was hoping that the problem was going to be settled right then and there. Being three ships was working, I figured, well, the thing was going to blow over.

Q. Did you talk to the men while you were at the hiring [fol. 204] center on Sunday, Sunday morning?

A. No, I did not.

Q. You didn't talk to the men?

A. At the hiring center, no, I did not.

Q. You didn't tell the men on Sunday morning that they should return to work?

A. At the hiring center?

Q. Yes.

A. I did not.

Q. But on Saturday at noontime you had promised to tell the men that they should return to work at the hiring center?

A. I promised the men that I—I promised the PMTA people that I would be at 98 the next morning. I said nothing about the hiring center.

Q. Oh, you didn't say that you were going to be at the hiring center?

A. No, I did not.

Q. Now, did you go to Pier 98?

A. I did.

Q. What time did you get there?

A. A few minutes after seven.

Q. And how many men were at Pier 98?

A. There was a couple hundred there.

Q. Did you talk to these men?

[fol. 205] A. Yes, I did.

Q. What did you tell them?

A. I told them that they should go to work, to settle this thing peaceably.

Q. You told the men that they should go to work?

A. Correct.

Q. Did you tell them that their work stoppage was unauthorized?

A. I told them they should go to work and let us settle the thing.

Q. I am not asking you that question, Mr. Moock. I am asking you whether or not you told the men that their work stoppage was unauthorized.

A. I am telling you what I told the men is, "You should return to work and let us settle this thing."

Q. Then I assume that your answer to my question is no.

A. I told the men that they should turn to and let us settle the thing.

Q. Now, were you at the hiring center on Tuesday?

A. On Monday and Tuesday, yes.

Q. What time did you get there on Tuesday?

A. The same time, a little after seven.

Q. And how many men were there when you got there?

A. This morning there was a larger amount than any of the other mornings.

[fol. 206] Q. How long did you remain at the hiring center?

A. Offhand I would say on Saturday, Sunday, I was one of the very last to leave down there.

Q. Mr. Moock, you apparently don't understand my question. I am relating now to the hiring center on Tuesday, which is today.

A. Today?

Q. Yes. How long did you remain at the hiring center today?

A. Probably about quarter after nine.

Q. Now, during that period of time did you talk to the men?

A. Yes, I did.

Q. And where did you talk with these men?

A. On both sides of the gate.

Q. And the gate is located where?

A. Right at the gate at 98; between 98 and 96.

Q. Is that at 98?

A. It is between 98 and 96.

Q. Oh, I thought you said you were at the hiring center.

A. This morning?

Q. Yes.

A. I went to the hiring center for a short while, and then I came up to 98. I got to 98 a little while after seven o'clock.

Q. Well, how long were you at the hiring center this morning?

[fol. 207] A. Only a few minutes.

Q. And how many men were there when you were there?

A. There was quite a few there.

Q. Did you talk to the men at the hiring center?

A. I did not.

Q. Then you didn't tell any of the men at the hiring center that they should go back to work?

A. I have never used the microphone down at the hiring center yet, ever since it was installed.

Mr. Scanlan: I submit that is not responsive, your Honor.

By Mr. Scanlan:

Q. I didn't ask you that question, whether you used the microphone, Mr. Moock. I asked you whether you talked to any of the men at the hiring center this morning and told them they should go back to work.

A. At the hiring center, no. I went to 98, because I am of the opinion that 98 was the problem, and that was where I was concentrating my efforts.

I do know when I went into the center that there were two or three of the delegates dispatching men each and every morning when I got there, and when I saw them dispatching men, I didn't linger around there too long. I got back in my car and went immediately up to 98.

[fol. 208] Q. Now, what time did you arrive at 98?

A. A few minutes after seven.

Q. And how many men were there when you got there?

A. It was in the hundreds, and there was more there this morning, I think, than any other previous day of the week.

Q. Did you talk to any of the men?

A. I talked to quite a number of them, yes..

Q. How many men did you talk to?

A. Offhand I would say I talked to a couple hundred.

Q. Now, what did you tell them?

A. I told them that they should turn to and let us settle this thing.

Q. Did you tell them their work stoppage was unauthorized?

A. I told them they should turn to and let us settle this thing in a peaceful manner.

Q. Then you did not tell them that the work stoppage was—

A. I told them to turn to and let us settle this in a peaceful manner.

Q. Now, Mr. Moock, I show you this telegram, which has been identified as P-3, and ask you if that is your name which appears on that telegram.

A. That is correct.

Q. And did you agree to that telegram before it was sent to Mr. Corry?

[fol. 209] A. That is correct.

Q. And did you agree to this language in the telegram which says that the union will not be entrapped into perpetrating the infamous award of Mr. Weiss?

A. They are not my words.

Q. Did you agree to those words?

A. That is correct.

Mr. Scanlan: That is all.

The Court: Any redirect?

Mr. Freedman: No.

The Court: Any more witnesses?

Mr. Freedman: Mr. Joseph Kane.

The Court: How many more witnesses do you have?

Mr. Freedman: Three or four, brief.

The Court: We will recess until tomorrow morning.

Mr. Freedman: Your Honor, I have to leave tonight. Each one of these won't take more than a few minutes. As

a matter of fact, all I intend asking each one of these is the simple question as to whether they were down on the waterfront—these are the other officials—whether they exhorted the men to go to work.

We can complete our case in a few minutes.

[fol. 210] The Court: All right, if we can complete in a few minutes. Otherwise, we will have to recess, because I have a commitment.

Mr. Freedman: Well, Your Honor—

The Court: Now, if it is merely corroborative testimony—

Mr. Freedman: That is all.

The Court: All right.

JOSEPH S. KANE, SWORN.

Direct examination.

By Mr. Freedman:

Q. Mr. Kane, you are the assistant financial secretary of the union?

A. Yes, sir.

Q. How long have you been on the Philadelphia waterfront?

A. Since October, 1933.

Q. And how long have you held your office?

A. Since January 1, 1954.

Q. Mr. Kane, you are familiar with the present dispute on the Philadelphia waterfront, are you not?

A. Yes, sir.

Q. Have you in connection with that dispute gone down to the waterfront to speak to the men?

[fol. 211] A. Pardon me, sir?

Q. Have you, in connection with that dispute, gone down to the waterfront to speak to the men?

A. Yes, sir.

Q. Will you tell us what you said to them?

The Court: I believe Mr. Kane is a bit hard of hearing. Are you?

The Witness: No, sir.

The Court: You didn't seem to grasp Mr. Freedman's question. I thought you were.

Don't talk quite so fast, Mr. Freedman. I think he didn't grasp your question.

Mr. Freedman: I appreciate Your Honor's suggesting.

By Mr. Freedman:

Q. Mr. Kane, do you understand the question now?

A. Yes.

Q. Would you tell us what you said to the men.

A. Well, I told the men that they should return to work.

Q. And how frequently did you tell them that?

A. Ever since 8:30 Saturday morning.

Q. And were you down there every day?

A. Every day since 8:30 Saturday morning.

Q. And is that something you did with all of the men, [fol. 212] wherever you found them?

A. Yes.

Q. Did you hear other officials of the union doing the same thing?

A. Every single officer did the same thing as myself, side by side and scattered throughout the crowds at different times.

Q. All saying the same thing?

A. Everyone said the same thing.

Mr. Freedman: Cross examine.

Cross examination.

By Mr. Scanlan:

Q. Mr. Kane, did you attend a meeting Saturday afternoon in Mr. Corry's office?

A. Yes.

Mr. Freedman: Objection. It is beyond the scope of the direct examination.

The Court: We will allow that question, but nothing beyond that. We have the testimony of the various persons about that.

By Mr. Scanlan:

Q. Isn't it true that at that meeting it was said the work stoppage was unauthorized?

Mr. Freedman: Did Your Honor say you would not permit any further questions along this line?

[fol. 213] The Court: That is right. It is beyond the scope of the direct. We have the testimony of the other witnesses on the subject.

Mr. Freedman: There is no question about that. Everybody admitted that. In fact, we asserted it.

By Mr. Scanlan:

Q. Now, Mr. Kane, I think you testified then in direct examination that you have been down on the waterfront every day since Saturday at noontime.

A. Since Saturday at 8:30 in the morning.

Q. Since Saturday at 8:30 in the morning, and you have been there all day long telling the men to go back to work; is that right?

A. No, I have left the waterfront at various times. We left the waterfront to go meet with Mr. Corry Saturday.

Q. Well, let's take it now from Sunday. Did you go down to the hiring center on Sunday?

A. No, sir, I went to Pier 98.

Q. What time did you get to Pier 98?

A. Five or ten minutes after seven o'clock in the morning.

Q. This is on Sunday morning?

A. Yes, sir.

Q. Now, how many men were there when you got there?

A. I didn't count them, sir.

[fol. 214] Q. Well, give us your best estimate.

A. I am very poor at judging crowds. I couldn't exactly say how many were there.

Q. You mean you don't know whether there were more than five men there or a hundred?

A. I know there were more than five, yes.

Q. Was there a hundred?

A. Much more than a hundred, I would guess.

Q. Was it two hundred?

A. I have no idea.

Q. Well, now, you talked to the men at Pier 98, did you not?

A. Everyone that I could make myself in contact with.

Q. Now, how many men did you talk to?

A. Sunday morning I would guess that I talked to at least a hundred.

Q. And what did you say to these men?

A. I told them that they should return to work and leave it up to the officers to settle this thing in a proper way.

Q. Did you tell them that their work stoppage was unauthorized?

A. No, sir, I told them that they should return to work and leave it up to the officials of the union to settle this thing in a proper way.

Q. And that is all you said to the men; is that right?

A. I have said that over and over and over again.

[fol. 215] Q. All right, let's take Monday. Did you appear at the hiring center on Monday?

A. Yes, sir.

Q. What time did you get there?

A. Five minutes after seven in the morning.

Q. How many men were there when you got there?

A. Mr. Scanlan, if you are familiar with the hiring center, the hiring center is a pretty large place, and the people are scattered in back of the poles, staying in their cars, and go in all different directions. I wouldn't be able to tell you any more than anybody else could tell you how many men were there.

Q. I am just asking for your best estimate, Mr. Kane.

A. I would say Monday morning well over a thousand men there, if I was to take a guess.

Q. All right, now did you talk to any of the men at the hiring center on Monday morning?

A. Many of them.

Q. And did you talk to them on the inside of the building or the outside?

A. No, sir, I didn't go inside the building until everybody started to scatter. I went through the whole crowd talking to them, telling them they should go to work.

Q. You talked to them on the outside then; is that right?
[fol. 216] A. Yes, sir; Monday morning men got on the buses and everything else and left the hiring center to go to work.

Q. Now, you didn't use the microphone at the hiring center, did you?

A. I wasn't in the building, never did use the microphone.

Q. Now, what did you tell these men on Monday morning?

A. I told them that they should return to work and leave it up to union officials to settle this problem in a proper way.

Q. Did you tell them that their work stoppage was unauthorized?

A. No, sir, I told them that they should return to work and leave it to the union officials to settle this problem.

Mr. Freedman: Your Honor, this is the third time. I don't know what is to be accomplished. I am going to object for no other reason than repetition, Your Honor.

The Court: I think we have all of this, Mr. Scanlan.

Mr. Scanlan: All right, then I will just ask him one other question.

By Mr. Scanlan:

Q. Were you at the hiring center today?

A. Yes, sir.

Q. What time did you get there?

A. Also at Pier 98.

Q. And also at Pier 98?

[fol. 217] A. Yes.

Q. Did you talk to the men?

A. Yes.

Q. What did you tell them?

A. I told them that they should return to work and Stewart Sobelman stood beside me while I did it.

Q. Is that all you told them?

A. I told them they should return to work and leave it up to the union officials to settle this problem in a proper way.

Mr. Scanlan: I see. That is all.

The Court: Anybody else, Mr. Freedman?

Mr. Freedman: Yes. Mr. Talmadge.

The Court: Will he testify to anything different than Mr. Kane?

Mr. Freedman: Just two more after this one; very brief.

The Court: Will he testify to anything different from Mr. Kane?

Mr. Freedman: Exactly the same.

ALEXANDER TALMADGE, SWORN.

The Court: Do you want to tell us what this man will testify to?

[fol. 218] Mr. Freedman: Yes. He will testify that he, too, went among the members and vigorously told them to go back to work and let the matter be resolved by the union officials in the proper channels, under the contract.

The Court: Is that correct?

The Witness: That is correct.

The Court: Is there any reason why you should cross examine?

Mr. Scanlan: No, Your Honor.

The Court: Anything else you want to ask Mr. Talmadge?

Mr. Freedman: No, I think that is about it.

Mr. Devine.

EDWARD H. DEVINE, SWORN.

Mr. Freedman: Does Your Honor want me to make an offer of proof again?

The Court: Yes.

Mr. Freedman: This witness will testify, too, that he went among the members since this episode started, exhorting them to return to work and to leave the disposition of this matter to the union officials.

The Court: One thing we forgot about Mr. Talmadge. What does he do? What is he?

[fol. 219] Mr. Freedman: He is a business agent of the union.

The Court: And Mr. Devine?

Mr. Freedman: Same thing, business agent of the union also.

The Court: Mr. Scanlan.

Mr. Scanlan: No reason to cross examine.

Mr. Freedman: These are all union officials I am calling, Your Honor.

The Court: I wanted to be sure that was on the record. That didn't appear in your offer of proof.

Thank you.

Mr. Freedman: Mr. Huggins, please.

[fol. 220] NORMAN HUGGINS, SWORN.

Direct examination.

By Mr. Freedman:

Q. Mr. Huggins, what is your position?

A. Financial Secretary and Treasurer.

Mr. Freedman: I offer to prove by this witness that he, too, went among the men and urged them to return to work and let the dispute be resolved by the Union officials in a proper manner under the contract.

The Court: Is that correct?

The Witness: That is correct.

The Court: Mr. Scanlan?

Mr. Scanlan: No cross-examination.

Mr. Freedman: Mr. Johnson.

The Court: We didn't ask Mr. Devine—Mr. Devine, where are you—that was correct that you would answer in that manner?

Mr. Devine: Yes, sir.

The Court: All right. Thank you, Mr. Devine.

Now whom do we have?

Mr. Johnson: Johnson.

The Court: Mr. Johnson?

Mr. Johnson: Yes.

[fol. 221] PAUL JOHNSON, JR., sworn.

Direct examination.

By Mr. Freedman:

Q. Mr. Johnson, what is your position in the Union?

A. Business Agent of Local 1291, International Longshoremen.

Mr. Freedman: I offer to prove by this witness that he, too, went among the men and vigorously urged the men to return to work and let the dispute be resolved by the Union officials under the contract.

The Court: Is that correct, Mr. Johnson?

The Witness: Right, sir.

The Court: Mr. Scanlan?

Mr. Scanlan: No cross-examination.

Mr. Freedman: Mr. Carter.

CLIFFORD CARTER, SWORN.

Direct examination.

By Mr. Freedman:

Q. What is your position in the Union, Mr. Carter?

A. I am Atlantic Coast District Vice-President.

Q. Of the International?

A. That is correct.

Q. Are you familiar with this dispute?

A. Yes, sir.

[fol. 222] Mr. Freedman: I offer to prove by this witness, sir, that he, too, went among the men and urged them to return to work and let the dispute be resolved by the Union officials.

The Court: Is that correct, sir?

The Witness: That's correct, sir.

Mr. Scanlan: No cross-examination.

Mr. Freedman: That's our case, sir.

The Court: Any rebuttal?

Mr. Scanlan: No rebuttal, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Anything you want to say, because I am going to retire for about five or ten minutes and come in and tell you what I think.

Mr. Freedman: Well, Your Honor, frankly, I am at a loss now—

The Court: Something that you haven't said before. You made your position very clear.

Mr. Freedman: I really don't know what to address myself to because I don't know what it is we are being charged with. Are we being charged because we want to arbitrate or because we asked to invoke the provisions or are we being charged for something else? I specifically don't know what they are charging us with.

I may say to Your Honor that we have been shooting in the dark here now, trying to guess at what may be [fol. 223] an issue, but I don't know. I would like to have it pinpointed. What are they charging us with and what is it that Your Honor considers here to be the pertinent factors, both from the legal standpoint and from the factual standpoint?

I would like to hear from Mr. Scanlan where he thinks the Union is involved. I think we are entitled to know that. I think we are entitled to have it on paper.

The Court: Mr. Scanlan I think made his position very clear yesterday.

Mr. Freedman: Well, I wasn't here yesterday.

The Court: Well, your partner was.

Mr. Freedman: Today is the hearing, Your Honor.

The Court: No, you can't send somebody and say "I didn't know what was going on."

Mr. Freedman: Your Honor, what he said doesn't matter. He has to put it in the pleadings. This is the contempt.

The Court: All right, Mr. Scanlan, take over. You can say in a few minutes what you want to say.

Mr. Scanlan: If Your Honor please, I just want to say that it is quite obvious what has happened. We thought that the Union was going to do everything that it could to get the men to go back to work until they sent [fol. 224] these telegrams on Monday and asked for this matter to be re-arbitrated and castigated the award of Mr. Weiss as an infamous award and said they were not going to perpetrate it and then the witnesses have admitted on the stand that while they went down and told the men to go back to work, they didn't tell the men that the work stoppage was unauthorized, and I don't know how we can get these men to go back unless they realize that their work stoppage is unauthorized.

It is one thing for the Union to say that the work stoppage is unauthorized and illegal in Mr. Corry's office, but the men who have to hear this are the men down on

the waterfront, and the people who have to tell them this are the officials of the Union, and this is something that they have failed to do, and in failing to do that, they have shown that they do not intend to abide by the arbitrator's award which was the essence of the order which Your Honor issued here. The order of Your Honor specifically enforced the arbitrator's award and decreed that the Union should comply with and abide by this award.

Now, Mr. Askew has testified on the witness stand that he considers it to be a ridiculous award, and it is quite obvious that if somebody considers the award to be ridiculous, they do not intend to comply with and to abide by it, and I think—

[fol. 225] The Court: I understand your position.

Anything else you want to say, Mr. Freedman?

Mr. Freedman: Yes, I would like to reply to that, if Your Honor please.

Well, it is apparent now that it is conceded that the Union did do everything that it could possibly have done under the circumstances in order to get the men to try to go back to work, to get back to work until Monday when, by the filing of this telegram asking for a grievance meeting, this changed the picture.

In other words, he places his whole case on this telegram in which we ask for a grievance meeting. Now, I submit to Your Honor that this is a perfectly proper and a perfectly legal thing to do. As a matter of fact, the Union was under an obligation to do it and it did it. It filed a protest or a request for grievance as required by the contract regardless of anything else.

Your order certainly doesn't—at least as I read your order—doesn't prohibit, proscribe grievances. Apparently, now, the whole case revolves on this, and I think it is absurd to suggest for one second as Mr. Scanlan does that it is illegal to ask for a grievance where there is a dispute, and I don't care what the decision might have been before, even if we were conceding the decision before, we would

[fol. 226] still have a right to ask for a grievance, a grievance meeting and even arbitration, if a dispute arose.

The Court: Anything else, Mr. Scanlan?

Mr. Scanlan: No, Your Honor, I have nothing further.

(A short recess was taken at 6.25 P. M.)

DECISION AND CONTEMPT ORDER—March 1, 1966

The Court: Gentlemen, this is a difficult case and one involving men who work on the docks.

We have an agreement and it is alleged that that agreement was violated. The matter came before me after the arbitration, after the arbitrator, Mr. Weiss, decided against the Union and its contention. The opinion of the arbitrator, Mr. Weiss, was upheld and I issued an order on September 15, 1965 enforcing that order.

Here we have men hired to do work and then they refuse under the conditions mentioned. They stop work and influence others not to report.

Both sides, of course, have a right to be here. That's the purpose of this Court.

I have heard the evidence presented and the arguments thereon. As long as the Union is functioning as a union, it must be held responsible for the mass action of its members. [fol. 227] That means this: When the members go out in the manner in which they did and do an illegal act, the Union is responsible. They can't say, "We didn't do that as Union members." If members of the Union—then they do act under the laws of this country—if it is a mass action, the Union is responsible, and that's what we have here. It is a mass action along the Philadelphia waterfront, and it is illegal to strike under the circumstances, so the Union cannot escape responsibility on the basis that a leader or some of the leaders urged a man or some men or many men to return to work, but they did not return to work.

So in my opinion the Union in effect approved what was done and must be held responsible. They violated the order of this Court and therefore shall be adjudged in civil

contempt. I hold the Union, the officers and the men who participated responsible in contempt of court and at this time civil contempt only.

The fine against the Union will be \$100,000 per day, effective this date at 2:00 P. M.

Mr. Freedman: What is that?

The Court: The first payment to be made—

Mr. Freedman: Would Your Honor read that last part back?

The Court: The fine against the Union will be \$100,000 [fol. 228] per day.

Mr. Freedman: One hundred?

The Court: \$100,000, effective this date, 2:00 P. M., the first payment to be made within 24 hours to the Clerk of the United States District Court, and every thereafter (sic) as long as the order of this Court is violated.

There will be a further hearing on this matter in the event that anything is desired to be presented by either or both counsel, and I will reserve the time, Monday at 2:00 P. M.

Exception noted.

(Concluded at 6:45 P. M.)

[fol. 229]

IN UNITED STATES DISTRICT COURT

EXHIBIT R-2

MEMBERS OF LOCAL 1291, I.L.A.

Because several companies pushed back gangs on Friday, February 25, 1966, those gangs refused to turn to that afternoon at 1:00 P.M. and also the same gangs refused to turn to on Saturday morning, February 26th.

These men then proceeded to go to the piers throughout the Port and knock off about forty other gangs that were working.

This protest by our members grew out of resentment to a ruling made by Milton M. Weiss, Arbitrator, that the

employers could invoke the push back for any reason whatsoever.

All of your officials, including our International Vice President, Mr. James T. Moock, fought vigorously in the arbitration proceeding in an effort to persuade the arbitrator as to the true intent of the negotiators. Nevertheless he did rule against us.

When Mr. Weiss made this ruling, all of your officials felt that his decision was a flagrant miscarriage of justice. Our feelings have not changed one iota since that time. We were convinced, and we remain convinced, that the Arbitrator's decision did not represent the intent of the negotiators.

We know, and all of our men know, that there are arbitration provisions in every labor contract of any importance and we also know that an arbitrator, like any other judge, is not infallible and will make some good decisions and some bad decisions. Since we are governed by the rule of law we must accept these decisions until they are reversed—or run the risk of getting into serious trouble.

We are taking an appeal from the Arbitrator's ruling with the hope that we can get it set aside or modified to the extent that our men will not have to come to a ship at 8:00 o'clock in the morning and then be told that they are pushed back until 1:00 o'clock.

We never intended that kind of thing in the negotiations and we do not believe that we did not convince the Arbitrator of that fact.

The following named I.L.A. officials urge all of our men to return to work and allow this dispute to be settled through proper channels.

JAMES T. MOOCK, International Vice President
 CLIFFORD CARTER, A.C.D. Vice President
 RICHARD ASKEW, President Local 1291
 JOSEPH S. KANE, Asst. Fin. Sec'y.
 NORMAN HUGGINS, Sec'y.-Treas.

JOHN SMITH, Business Agent
PAUL JOHNSON, JR., Business Agent
ALEX TALMADGE, Business Agent
EDWARD DEVINE, Business Agent

[fol. 230] Clerk's Certificate to foregoing transcript
(omitted in printing).

[fol. 231]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647

PHILADELPHIA MARINE TRADE ASSOCIATION, a non-profit
Delaware corporation, Bourse Building, Philadelphia,
Pennsylvania, Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291,
Lafayette Building, Philadelphia, Pennsylvania, De-
fendant.

MOTION FOR HEARING TO FIX AMOUNT OF FINE AND TO
ENFORCE JUDGMENT OF CIVIL CONTEMPT

The motion of plaintiff, Philadelphia Marine Trade As-
sociation, respectfully represents as follows:

1. On March 1, 1966, by an order of this Court the de-
fendant was adjudged in civil contempt for violating an
order of this Court entered on September 15, 1965 and was
ordered to pay a fine of One Hundred Thousand (\$100,-
000.00) Dollars per day effective at 2:00 P. M., on March 1,
1966. The first payment was to be made within twenty-
four hours to the Clerk of the United States District Court
and a similar payment was to be made for each day there-
after as long as the order of this Court was violated.

[fol. 232] 2. No payment of the said fine has been made to the Clerk of the United States District Court.

3. On March 2, 1966 defendant filed a notice of appeal with the United States Court of Appeals for the Third Circuit and also filed a motion with that Court for a stay of execution of this Court's contempt order without the posting of a supersedeas bond.

4. On March 9, 1966 the United States Court of Appeals for the Third Circuit entered an order denying defendant's motion for a stay of execution of the said contempt order without a supersedeas bond and granted a stay of the said order upon the filing of a supersedeas bond in the amount of Fifty Thousand (\$50,000.00) Dollars. A copy of the Court's order is attached hereto, made a part hereof and marked Exhibit "A".

5. No supersedeas bond has been filed in accordance with the said order of the Circuit Court of Appeals.

Wherefore, plaintiff requests this Court to set a hearing for the purpose of fixing the amount of the fine owed by the defendant and enforcing the judgment against the defendant for civil contempt.

Respectfully submitted:

Kelly, Deasey & Scanlan, By Francis A. Scanlan,
Attorneys for the Plaintiff.

[fol. 233]

EXHIBIT A TO MOTION
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 15804

PHILADELPHIA MARINE TRADE ASSOCIATION,
vs.
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 1291,
Appellant.
(D. C. No. 38647 Civil)

Present: SMITH and FREEDMAN, *Circuit Judges*, and MILLER, *District Judge*.

Upon consideration of the motion by appellant, and of the answer by appellee, and after hearing,

It is ORDERED that the motion for stay of execution of the contempt order without supersedeas bond be and it hereby is denied;

It is Further ORDERED that upon the filing of a supersedeas bond in the amount of fifty thousand dollars (\$50,000.00), with surety or sureties to be approved by the Clerk of the District Court, the execution of the District Court contempt order entered on the docket March 2, 1966 be stayed, pending the ultimate disposition of the above entitled appeal.

By the Court,

/s/ ABRAHAM L. FREEDMAN
Circuit Judge

Dated: March 9, 1966

[fol. 234]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Civil Action No. 38647

PHILADELPHIA MARINE TRADE ASSOCIATION, a non-profit Delaware corporation, Bourse Building, Philadelphia, Pennsylvania, Plaintiff,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291, Lafayette Building, Philadelphia, Pennsylvania, Defendant.

ORDER—March 25, 1966

And Now, To Wit this 25th day of March, 1966 upon consideration of the motion of plaintiff, Philadelphia Marine Trade Association, it is hereby ordered, adjudged and decreed that a hearing shall be held on the 13th day of April, 1966 at 2:00 P. M., for the purpose of fixing the amount of the fine owed by the defendant and enforcing the judgment of this Court against the defendant for civil contempt.

By the Court

Ralph C. Body, J.

[fol. 235]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 15804

PHILADELPHIA MARINE TRADE ASSOCIATION,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
Local 1291, Appellant.

APPEAL FROM ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued June 14, 1966

Reargued September 29, 1966

Before GANEY and SMITH, Circuit Judges, and KIRKPATRICK, District Judge.

OPINION OF THE COURT—Filed November 17, 1966

By KIRKPATRICK, District Judge.

This is an appeal from an order of the District Court holding the defendant union in contempt for violation of a previous order of the court. The order (affirmed by this court August 11, 1966) which was the basis of the contempt proceeding, directed the union to comply with an arbitration award in a dispute as to the proper interpretation of a term of its collective bargaining agreement with the Marine Trade Association. Sometime after the entry of [fol. 236] that order, a widespread work stoppage closing

[File endorsement omitted]

the Port of Philadelphia occurred because the men were dissatisfied with the arbitrator's award.

The Court, at 6:45 P.M. on March 1, after hearing, held the union responsible for the mass action of its members, adjudged it to be "in civil contempt only" and imposed a fine of "\$100,000 per day effective this date at 2:00 P.M." (the time when the hearing began) "the first payment to be made within 24 hours . . . and every thereafter (sic) as long as the order of this Court is violated." The record made before the trial court fully justifies the Court's finding that the mass action of the members of the union was, in fact, the action of the union. The union appealed the next day.

The character of the order, whether for civil or criminal contempt, was the subject of a reargument in this court. Of course, the fact that the judge called his action a judgment in civil contempt, though persuasive, is not conclusive. However, under the rule laid down by the Supreme Court in *Shillitani v. United States*, June 6, 1966, the judge was clearly right.

In the *Shillitani* case the court announced a perfectly clear, simple, and easily applied test for determining whether a penalty imposed in a contempt proceeding is for a civil or criminal contempt. The court said, "The test may be stated as: what does the court primarily seek to accomplish by imposing sentence?" It seems that in this case there can hardly be much doubt that the judge was primarily, if not solely, seeking to put an end to the strike, and that he may have had in mind some thought of punishment as well does not affect the nature of the proceeding.

The fact that the order of \$100,000 per day was made "effective" at a time more than four hours past, with the first payment not due until the following day, is no indication that its purpose was punitive rather than coercive—rather the contrary. It would be hard to think of any good reason why the judge, if he was imposing a fine solely [fol. 237] as a punishment for a criminal offense, would date it back. On the other hand, it would be entirely logical

for the judge in this case to fix a past hour as the effective date of his order so as to give a starting point for the first 24-hour period at the end of which the first payment was to be made.

Of the several points raised by the appellant the only one which merits extended notice is the contention that the union was entitled to a trial by jury and that the Court's refusal to comply with a written demand therefor was a deprivation of due process. Plainly, due process is not involved. What is involved, however, is whether it was error to deny the union a jury trial.

Title 18 U.S.C. 3692,* upon which the union bases its claim to a right of trial by jury, was originally a part of the Norris-LaGuardia Act. The union contends that it applies to all contempt proceedings growing out of a labor dispute but, on its face, it applies only to cases of contempt for violation of certain injunctions or restraining orders.

The order under review is not an injunction or a restraining order but an order under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185, for specific performance of the bargaining agreement which made the award final and binding. This court has already so ruled. Nor does it involve or grow out of a labor dispute. There was a labor dispute between the plaintiff and the union, but it had been settled by the arbitrator's award in accordance with the bargaining agreement and was no longer alive. The order arose not from the labor dispute but from the union's conduct in failing to carry out the Court's order.

Moreover,* Congress in 1948 took the subject matter of 3692 out of the Norris-LaGuardia Act and made it a part of the criminal code. The natural inference to be drawn from [fol. 238] that action is that Congress intended the protec-

* "In all cases of contempt arising under the law of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury."

tions provided by 3692 to be accorded to defendants in criminal proceedings and that that section is simply not applicable in cases of civil contempt in which the court is seeking only to obtain compliance with an order.

The order of the District Court will be affirmed.

[fol. 239]

IN THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15,804

PHILADELPHIA MARINE TRADE ASSOCIATION,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 1291, Appellant.

(D. C. Civil No. 38647)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: GANEY and SMITH, Circuit Judges, and KIRKPATRICK, District Judge.

JUDGMENT—November 17, 1966

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the District Court rendered orally in open court March 1, 1966 and in transcript filed March 2, 1966 be, and the same is hereby affirmed, with costs.

[File endorsement omitted]

[fol. 240]

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15,804

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—
Dated January 6, 1967

Present: STALEY, Chief Judge, McLAUGHLIN, KALODNER,
HASTIE, GANEY, SMITH, FREEDMAN, SEITZ, Circuit Judges,
and KIRKPATRICK, District Judge.

The petition for rehearing filed by International Longshoremen's Association, Local 1291 in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

William F. Smith, Judge.

[File endorsement omitted]

[fol. 241]

SUPREME COURT OF THE UNITED STATES

No. 1218—October Term, 1966

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 1291, its officers and members, Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION.

ORDER ALLOWING CERTIORARI—May 22, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is placed on the summary calendar and set for oral argument immediately following No. 892.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.